

STATE OF CALIFORNIA
THE RECLAMATION BOARD
REGULAR BOARD MEETING

RESOURCES BUILDING
1416 NINTH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

Friday, December 21, 2007

9:07 A.M.

KATHRYN S. SWANK, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Mr. Butch Hodgkins, Vice President

Ms. Lady Bug Doherty, Secretary

Ms. Rose Marie Burroughs, Member

Ms. Teri Rie, Member

Mr. John Brown, Member

Ms. Emma Suarez, Member

STAFF

Mr. Scott Morgan, Legal Counsel

Mr. Jay Punia, General Manager

Mr. Stephen Bradley, Chief Engineer

Mr. Eric Butler, Senior Engineer

Mr. Dan Fua, Supervising Engineer

Ms. Lorraine Pendlebury, Staff Assistant

ALSO PRESENT

Mr. Nick Avdis, Self

Mr. John Bassett, SAFCA

Mr. Melvin Borgman, Self

Mr. Paul Brunner, TRLIA

Mr. Stein Buer, SAFCA

APPEARANCES CONTINUED

Mr. Joe Countryman, MBK Engineers

Mr. Steve Dawson, Department of Water Resources

Mr. Bill Hampton, Levee District 1

Mr. Tom Eres, Hofman Ranch

Mayor Heather Fargo, SAFCA, City of Sacramento

Mr. Thomas Foley, Concerned Citizens for Responsible Growth

Ms. Linda Hovis, Self

Mr. Richard Marshall, California Central Valley Flood Control Assn

Mr. Eric McGrath, Department of Water Resources

Mr. George Qualley, Department of Water Resources

Ms. Denise Reichenberg, California State Parks

Mr. Thomas Rice, Rice River Ranch

Mr. Jim Sandner, USACA

Mr. Jeff Schneider, Self

Mr. Scott Shapiro, TRLIA

Mr. John Shiels, RD 1000, SAFCA, River Oaks Community Assn

Mr. Patrick Tully, Sacramento River Property Association

Mr. Jeffrey Twitchell, Levee District 1

Mr. Robert Wallace, Self

Mr. Tim Washburn, SAFCA

Mr. Bill Yeates, Garden Highway Community Association

INDEX

	PAGE
1. Roll Call	1
2. Approval of Agenda	2
3. Public Comments	14
4. Three Rivers Levee Improvement Authority Monthly Report	22
5. Applications	
A. Mitigation for Tisdale Bypass Rehabilitation Project at Colusa- Sacramento River State Recreation Area - Application No. 18312 BD, Colusa County	27
B. Levee District No. 1 of Sutter County, Application No. 18191, Sutter County	38
C. Application No. 18227, Three River Levee Improvement Authority, Feather River, Phase 4, Segment 2 - Setback Levee	69
D. Application No. 18159-2, Sacramento Area Flood Control Agency, Natomas Levee Improvement Program, Natomas Cross Canal, Sutter County	191
1. Consider approval of a letter to the Sacramento District, U.S. Army Corps of Engineers, requesting Section 408 approval to alter the federal flood control project levee along the south (left) bank of the Natomas Cross Canal in Sutter County.	
2. Consider approval of Draft Permit No. 18159-2 to place fill to raise and realign approximately 5.3 miles of levee, and to construct approximately 4.3 miles of seepage cutoff wall in the levee along the south (left) bank of the Natomas Cross Canal in Sutter County.	

INDEX CONTINUED

PAGE

BOARD REPORTS

6.	Board Comments and Task Leader Reports -- POSTPONED	
7.	Report of Activites of the General Manager	63
8.	Future Agenda -- POSTPONED	
9.	Adjourn	271
	Reporter's Certificate	272

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 PRESIDENT CARTER: Good morning, ladies and
3 gentlemen. Welcome to the State Reclamation Board meeting
4 for December 21. For the benefit of everyone here, we
5 would like to ask people if they would please, as they
6 come in, at the table at the front of the auditorium,
7 there's a sign-in sheet. If you would please sign in if
8 you so choose. And also there are white 3-by-5 cards, a
9 stack out there, and also Ms. Pendlebury here at the front
10 has the cards. If you wish to address the Board, please
11 fill those out so we know to recognize you.

12 As most of you know, we had a meeting yesterday.
13 The agenda that was published was sent out approximately
14 two weeks ago. It had both days on it. We are beginning
15 on page 3 of the published agenda under December 21. And
16 we will start today's agenda under Item No. 1 for
17 December 21, which is roll call.

18 So Mr. Punia, could you please call the roll.

19 GENERAL MANAGER PUNIA: Jay Punia, General
20 Manager, Reclamation Board.

21 For the record, except Board Member Butch
22 Hodgkins, the rest of the Board members are here.

23 PRESIDENT CARTER: Very good. Thank you very
24 much.

25 Next we will have approval of the agenda for

1 December 21.

2 So are there any changes to today's agenda,
3 Mr. Punia?

4 GENERAL MANAGER PUNIA: Staff recommends that
5 Item 5C, Application No. 18227, Three Rivers Levee
6 Improvement Authority, Feather River Phase 4, Segment 2 --
7 Setback Levee, staff recommends that this item be removed
8 from today's agenda. The reason for that is that all the
9 information needed to have a solid recommendation to the
10 Board was not available at the time we were compiling all
11 that information. So we were recommending that this item
12 be removed from today's agenda.

13 But I can assure the Board that we will work
14 aggressively so that we can bring this item back to the
15 Board as soon as possible, preferably during the month of
16 January or February.

17 Steve Bradley was assigned to this project. I
18 think we'll elaborate why we are not ready to give a
19 recommendation to the Board on this project.

20 PRESIDENT CARTER: Steve?

21 CHIEF ENGINEER BRADLEY: Yes. There were several
22 things. I sent out an e-mail in late November asking for
23 certain items. One was the Corps of Engineers approval
24 letter. I sent this to Ric Reinhardt, the project manager
25 for Three Rivers, asking that this information be provided

1 by December 5th. There was the Corps of Engineers letter
2 and there was the design drawings for the overlap of the
3 levees. We did receive the overlap of the levees. That
4 has not been reviewed by staff at this time. We did not
5 receive the Corps of Engineer letter. I actually received
6 my copy on December 18th, but they had sent a copy to the
7 staff on December 11th and it went to a staff member that
8 was not there. So I didn't see it until, essentially,
9 last Friday.

10 MEMBER RIE: And Mr. Bradley. In our October
11 staff report for the 408 request there was a letter from
12 the Corps. It's dated September 20th.

13 CHIEF ENGINEER BRADLEY: It was not adequate for
14 what the application is now. They only addressed -- they
15 did not address construction of the levee, only placement
16 of the fill for a new levee against the existing project
17 levee in that letter. And I addressed that in October was
18 not adequate for proceeding with the permit as it is now
19 or the application where it is now.

20 MEMBER RIE: Well, the letter says that breaching
21 or degradation of the levee is not addressed. But the
22 tie-ins are addressed, and there's comments provided in
23 the September 20th letter.

24 CHIEF ENGINEER BRADLEY: Right. They did not
25 address the setback levee, only the tie-ins. That letter

1 is not adequate for what the application is asking now.

2 MEMBER RIE: I think that the Corps attended the
3 meeting --

4 CHIEF ENGINEER BRADLEY: Regardless of what
5 happens here, you do not have a staff report and you do
6 not have a permit.

7 MEMBER RIE: But couldn't we use the staff report
8 that you provided in October?

9 CHIEF ENGINEER BRADLEY: That was for 408 action.
10 That was not for an application.

11 SECRETARY DOHERTY: Mr. Bradley --

12 CHIEF ENGINEER BRADLEY: And I'm very
13 uncomfortable where we are here. You have three projects
14 under 408 you're going to hear today. I'm very
15 uncomfortable where we are in review on the technical
16 basis and on the environmental basis. I believe the other
17 engineers on their project are also in very similar
18 conditions, without any urging on my part. We have large
19 projects moving forward at a very rapid pace without the
20 staff necessary to do an adequate review.

21 Both environmental staff -- we have one
22 environmental person looking at three huge environmental
23 documents in a very short span of time. There are
24 numerous engineering documents.

25 I'm sorry, Lady Bug.

1 SECRETARY DOHERTY: That's all right. You said
2 that you had gotten a letter. Was it a copy of the same
3 letter that went to them?

4 CHIEF ENGINEER BRADLEY: You mean a copy --

5 SECRETARY DOHERTY: A copy of the 408? I think
6 you -- the letter you requested from Ric Reinhardt.

7 CHIEF ENGINEER BRADLEY: No. I told him -- I
8 didn't request it from him. I said what we need is the
9 Corps of Engineers approval letter from the application.

10 SECRETARY DOHERTY: Oh, but the Corps didn't send
11 you a letter, a copy. They just send it to Mr. Reinhardt.

12 CHIEF ENGINEER BRADLEY: They actually sent it to
13 staff on December 11th. I told him we needed it by
14 December 5th. The mail out is December 12th. We had
15 extended all the times, as it was, to accommodate this.
16 Where it wasn't in there, I proceeded on to other things.
17 It wasn't like I was sitting there doing nothing.

18 MEMBER RIE: Did the Corps have any comments in
19 that letter on December 5th?

20 CHIEF ENGINEER BRADLEY: I do not think it's an
21 adequate letter.

22 MEMBER RIE: What did it say?

23 CHIEF ENGINEER BRADLEY: They said they have no
24 objections but everything we handled under 408 -- under
25 20810, they are required to make a determination that the

1 project as proposed will not impact the flood protection
2 facilities. They did not do that.

3 VICE PRESIDENT HODGKINS: Could I make a comment?

4 First of all, I'm sorry I'm late.

5 But what Steve said about inadequate staff and not
6 having the time to really dig into these the way he would
7 like to and the way we would like him to, it's true.
8 We're trying to get that addressed, because it's true.

9 Here's what I think is the challenge for the Board
10 this morning on TRLIA. Because of staff -- because of a
11 lack of resources, we don't have the staff report. Now,
12 we've heard a lot over the last year about the project.
13 And I think what the Board in essence here -- even though
14 we don't have a staff report and I would agree with Steve
15 that I'm uncomfortable in proceeding forward, without a
16 staff report. But what we have here is a project that is
17 an important project. But the fact is there's no staff
18 report because of administrative and bureaucratic
19 constraints not just at the state level, also at the
20 federal government.

21 So I think the challenge for the Board, certainly
22 in my own mind -- I've been vacillating on this whole
23 issue since I found out there was no staff report last
24 week, or Tuesday of this week, is -- there are potentially
25 40,000 people who need to see a levee improved. Okay?

1 And I think the Board from -- this is my view.
2 Okay? Our job here is to balance the potential impacts to
3 public safety of possibly delaying this project against
4 whether or not we think we have enough information where
5 we can confidently make a decision to go forward on the
6 project.

7 So what I would like to do is to go ahead and
8 leave the item on the agenda, hear a discussion when we
9 have folks from the Department of Water Resources here and
10 the Corps of Engineers, which I believe they are coming.
11 And then after we have -- get to this item, we have those
12 people here, we can get very specific about whether the
13 letter is adequate or inadequate if we have the Corps
14 here, and other things. And then the Board can decide
15 whether it wants to hear more testimony with the
16 possibility of moving forward with the project at that
17 time, or in effect say no, we can't do this.

18 I don't know, you know, where we're going to end
19 up. But I do think as a Board member that part of my
20 obligation here -- and I know there are perceptions that I
21 work too closely with the applicants. But it is because
22 I'm committed to moving projects forward. And it's
23 something that I may have learned and you have to keep
24 pushing them or they die. They die because there are
25 inadequate resources.

1 And I think as Board members, as part of our job,
2 we have to push and we have to challenge ourselves about
3 whether or not we have enough information to make a
4 decision.

5 So that's sort of my view. I would like to see it
6 left on the agenda so that we can discuss it more at the
7 appointed time when all of the parties are here and then
8 maybe after initially talking about specifically the
9 things that weren't here in their adequacy, deciding
10 whether we should go forward and listening to the
11 applicant, listening to staff both in terms of what they
12 know and what they don't know, and deciding whether we
13 could make a decision.

14 So that's my suggestion.

15 SECRETARY DOHERTY: If that's a motion -- is it?

16 VICE PRESIDENT HODGKINS: I assume -- and this
17 is -- I should be shot for being late.

18 If there is no motion to pull this from the
19 agenda, then it would just stay on and there is no need to
20 do anything. And we would discuss it further at the
21 appointed time.

22 PRESIDENT CARTER: We'll take care of the public
23 execution later.

24 There is a member of the public that wanted to
25 address us on this. Mr. Shapiro, do you have something to

1 add?

2 MR. SHAPIRO: Thank you, Mr. Carter. Scott
3 Shapiro, special counsel for Three Rivers.

4 I want to support something that Member Hodgkins
5 said. The debate now is not whether to issue Three Rivers
6 a permit or delegate your general manager to issue the
7 permit. It's to keep this on the agenda at the time it's
8 been reserved for and allow Three Rivers to sit and to
9 make a presentation as to why we think it's important to
10 proceed now and why we think even without a staff report
11 you can proceed.

12 I sat down and talked with Steve beforehand, and I
13 respectfully acknowledge that despite not having a staff
14 report, we're talking and we both support the project
15 generally, and Steve has expressed concerns about doing so
16 today.

17 But we think there's concrete problems with not
18 proceeding today. You will have DWR come later, and DWR
19 will tell you that there's a funding grant agreement that
20 we are negotiating with DWR, and that grant agreement --
21 we sat and talked about earlier this week. And they
22 expect it to be executed in January, and that will result
23 in us starting to get our \$138 million, except section 12C
24 of that grant agreement says we don't get any money until
25 we have a permit. We have to have all of our permits

1 lined up.

2 And we have an agreement with the developers.

3 Everyone knows that \$30 million of our \$190 million

4 project is funded by developers and the development

5 agreement says we don't get money until we have a permit.

6 Now, it's true, as Steve has said, or has said to

7 me, at least, privately, that we don't actually start

8 constructing until end of March, beginning of April. So

9 you might say, "Well, let's just deal with this in

10 February or March."

11 The problem is without money starting to roll in

12 January, we can't acquire land. And we need to have the

13 land before we start construction. We need to have that

14 two- or three-month window to line up all the land rights.

15 If we waited until February or March and money starts to

16 flow in March or April, then we have land in July or

17 August and we start construction in a very small

18 construction season. We don't get the setback levee done

19 in 2008, and 40,000 people up there go through an extra

20 flood season.

21 I have a binder that I made for each Board member.

22 I will have a chance to show you. It has, I believe, all

23 the information you need. There's copies of the Corps

24 letter. It has the explanation of why the Corps letter is

25 adequate. It explains the alignment.

1 All the information we think you need, the only
2 issue I'm asking is to stay on the agenda. It was
3 properly noticed. Give us a chance to present it.

4 Thank you.

5 PRESIDENT CARTER: Thank you.

6 SECRETARY DOHERTY: Mr. Chairman?

7 PRESIDENT CARTER: Yes.

8 SECRETARY DOHERTY: I would like to make a motion
9 that we keep the agenda as presented unless there's any
10 additional changes that Mr. Punia thinks we need to make.

11 MEMBER SUAREZ: Second.

12 PRESIDENT CARTER: We have a motion and a second.

13 Are there any other proposed changes to the
14 agenda?

15 Okay. Any further discussion with regard to the
16 agenda? Any other questions, discussion from the Board
17 members? Ms. Burroughs?

18 MEMBER BURROUGHS: I respectfully wholeheartedly
19 disagree with keeping it on the agenda.

20 I believe that, yes, there's a great need to
21 expedite and to help with providing the necessary
22 resources to complete projects in a timely manner. But I
23 believe that we as a Board must respect our staff
24 recommendations. And if we do not have the timeline to
25 have the technical review by our staff, then we are doing

1 a greater injustice to our whole state by allowing
2 projects to go through without the proper technical
3 review.

4 These are very complex and we are treading on a
5 lot of gray area dealing with the 408. And for that
6 reason, we need to proceed with even more caution.

7 I would implore the Board to support the Board's
8 recommendation -- I mean, the staff's recommendation in
9 not having it on the agenda.

10 MEMBER BROWN: Call for the question,
11 Mr. Chairman.

12 I'm sorry. Go ahead.

13 MEMBER SUAREZ: Thank you, Mr. Brown.

14 I just -- I respect tremendously the sincerity of
15 Ms. Burrough's comments and I do respect staff. And I do
16 believe that we would benefit and always benefit when they
17 give us their opinion. My guess is through the day as we
18 discuss this matter further we will get their opinion one
19 way or another. It will be part of the record.

20 We are here to gather information, create a record
21 from which we can exercise our independent judgment.
22 We're not here just to follow the orders or follow the
23 recommendations of staff. Sometimes we do. Sometimes we
24 don't. We serve as an independent board. We are to
25 utilize our independent judgment.

1 In my judgment, there is enough information on
2 this project that our two or three items that need to be
3 discussed and debated, I believe that we will all have
4 opportunities this afternoon to have that discussion and
5 there will be other discussion. If the majority of the
6 Board feels uncomfortable with proceeding, I'm sure the
7 vote will reflect that.

8 But to stop the discussion at this point in such
9 an important project -- not only this one but the rest of
10 the projects that we have on our agenda, which are
11 critically part of the governor's plan to improve our
12 flood control system, which he presented to the
13 legislature at the beginning of the year, which he will
14 have to report back to the legislature at the beginning of
15 next year -- I think it would be a great disservice if we
16 didn't move forward.

17 MEMBER BROWN: Call for the question.

18 PRESIDENT CARTER: Okay. So everyone understands,
19 calling for the question, that is calling for a vote to
20 end discussion.

21 All those in favor of ending the discussion on
22 this particular topic?

23 (Ayes.)

24 PRESIDENT CARTER: And opposed?

25 Okay. So Mr. Punia, would you call the roll?

1 Does everybody understand the motion? The motion
2 before us is to approve the agenda as noticed, as sent
3 out.

4 GENERAL MANAGER PUNIA: Board Member Emma Suarez?

5 MEMBER SUAREZ: Aye.

6 GENERAL MANAGER PUNIA: Board Member Butch
7 Hodgkins?

8 VICE PRESIDENT HODGKINS: Aye.

9 GENERAL MANAGER PUNIA: Board Member Teri Rie?

10 MEMBER RIE: Aye.

11 GENERAL MANAGER PUNIA: Board Member John Brown?

12 MEMBER BROWN: Aye.

13 GENERAL MANAGER PUNIA: Board Member Rose Marie
14 Burroughs?

15 MEMBER BURROUGHS: No.

16 GENERAL MANAGER PUNIA: Board Member Lady Bug?

17 SECRETARY DOHERTY: Yes.

18 GENERAL MANAGER PUNIA: President Ben Carter?

19 PRESIDENT CARTER: Aye.

20 Okay. So the motion carries.

21 The agenda is approved as noticed.

22 At this time, Item 3. We enter into public
23 comment. This is the time when the Board reserves time
24 for members of the public to address the Board on
25 unagendized items.

1 We ask that members of the public, number one,
2 please give us cards that indicate that you do want to
3 address the Board. We also ask that members of the public
4 under public comment please try and limit their comments
5 to three minutes. And if you choose to address the Board
6 but you -- everything that you want to address the Board
7 has already been addressed by someone else, please come up
8 and address the Board, but in the interest of time and the
9 number of people that want to address the Board, please
10 try not to repeat what has been said before. You can just
11 acknowledge that you agree with the prior speaker. That
12 would help us move the process along, if you would.

13 So at this time, I do not have any cards that are
14 specifically for public comment. But I will ask our --
15 are those -- are there folks in the public who do want to
16 address the Board at this time?

17 Yes, sir. If you would please come up to the
18 podium and introduce yourself for the record.

19 MR. WALLACE: Thank you. My name is Robert
20 Wallace. And I live in Pleasant Grove on Flight Field
21 Road.

22 And I was here to address you differently, but now
23 that I find out that that's not going to happen until this
24 afternoon, I would address you as an item not on the
25 agenda but connected to the agenda.

1 And that is, the issue of the east-west main Drain
2 Canal, which you're going to be talking about as part of
3 the project this afternoon; and the Pleasant Grove Creek
4 Canal, which in Sutter County, the west side is known as
5 Natomas Road. The Pleasant Grove Creek Canal is bordered
6 on the west by Natomas Road and on the east by the other
7 side of the levee.

8 The problem is, is that through the years, since
9 the government acquired title to that through eminent
10 domain, through the years, the west side of the Pleasant
11 Grove Creek Canal levee, Natomas Road, has been gradually
12 raised. Every time it's resurfaced, repaved, potholes
13 filled, whatever, it's raised, higher, higher, higher.

14 The net result is now, after 75 years of that, is
15 the west side of the Pleasant Grove Creek Canal levee
16 system is 6 feet higher than the east side. I'm on the
17 east side. Guess where the water goes during even an
18 average winter? I've had two occasions -- 1986, 1997 --
19 where I had 4 feet of water in my living room.

20 The court ordered that not to happen. When the
21 eminent domain process was granted back in the early part
22 of 1900, the court specifically stated that the west side
23 will never, ever be allowed to be higher than the east
24 side.

25 Nobody paid any attention to it. After we flooded

1 for the second time, we had to file a lawsuit against
2 everybody. We found the court order prohibiting the west
3 side from ever being raised. It was a bombshell. As most
4 of you probably know, that prevailed -- we prevailed in
5 court. It was challenged. It went to the Third District
6 Court of Appeals and it was reaffirmed.

7 What I would like to know and what I would like
8 the Board to consider, since it's not on the agenda, is
9 what do you intend to ever do about that east side of the
10 Pleasant Grove Creek Canal that still hasn't been raised
11 an inch? It's six feet below the west side. The next
12 time we have a heavy rain, I'm going to have 4 feet of
13 water in my living room again.

14 I would like to have that issue addressed as to
15 what the Board and all the governmental agencies that you
16 are connected with plans on doing about getting back in
17 compliance with the existing court order. Do we have to
18 sue again? Do we have to have a class action where we get
19 a court to issue an injunction to stop this whole project
20 until that is addressed? Because if we do, if we have to,
21 we will.

22 There's talk already in Pleasant Grove about the
23 class action to force this, to force the compliance with
24 an existing court order.

25 And lastly, the east-west main drain canal, when

1 that was first approached to be improved and widened and
2 raised and so forth, 10 or 15 years ago, we agreed -- we
3 being the citizens of Pleasant Grove agreed through our
4 elected representatives not to oppose the improvement of
5 the east-west main drain canal because in order for us to
6 get protection, that had to be step one, to improve the --
7 to widen and deepen and raise the east-west main drain
8 canal.

9 Once that was completed, supposedly, step two was
10 going to be to do things to protect Pleasant Grove. Step
11 two never happened. There hasn't been one shovel of dirt
12 ever turned to protect South Sutter County or Pleasant
13 Grove.

14 We have deep sympathy for the people in Natomas
15 and right here where we stand, in Sacramento. But water
16 flows downhill. What has been done with these levees has
17 caused water to flow uphill. Those levees not only
18 channel water, they act as dams. And so the water coming
19 down the hill from Placer County can't get out anymore
20 because of those levees.

21 So we need some protection in South Sutter County.
22 And I would like the Board to start putting on the agenda
23 and addressing the issue of protection for Pleasant Grove
24 and South Sutter County as well as Natomas and Downtown
25 Sacramento.

1 Thank you.

2 PRESIDENT CARTER: Thank you.

3 MR. BORGMAN: My name is Melvin Borgman. I live
4 at 3559 Howsley Road in Pleasant Grove, which is just
5 about the intersection of Pleasant Grove Road.

6 I come at this a little bit different angle than
7 Mr. Wallace. I live upstream about another mile from him.
8 And over the years -- I was born in Nicholas. And in 1955
9 I had to leave home and go live with my grandmother
10 because the levee broke about a mile up from our house.
11 Well, in 1962 and 1964, the water in the river at Nicholas
12 was even higher. And in 1986 and 1997, the water again
13 was higher than the previous events.

14 And I would suggest that this Board should
15 commission a study to study the entire system from the
16 East Bay through the Delta through the system here, clear
17 up to the headwaters of what is happening to cause the
18 river elevations to be constantly increasing in each
19 subsequent event. And I don't think that global warming
20 is the entire cause.

21 We have a tremendous amount of siltation taking
22 place in the East Bay in the Delta Region, because the
23 silt is not silting throughout the valley regions where it
24 did prior to the building of the levees. We have islands
25 in the Delta which are created by the levee system, and

1 many of these islands are actually below sea level.

2 And I have at times even heard of the heights at
3 times of the high and low waters at Rio Vista, water at
4 Rio Vista is even higher than it is at I Street.

5 There's a tremendous amount of increase of flow of
6 water coming from the east into our Pleasant Grove region
7 from Western Placer County from increased development.
8 Faster runoff.

9 Also, there's a tremendous increase in pumping
10 capacity by reclamation and drainage districts up and down
11 the system.

12 Right here in the Reclamation District 1000 area,
13 there are two pumping plants, that I know of, that did not
14 exist prior to 1960 -- one right here at Northgate and
15 there must be a bank of a half a dozen pumps with motors,
16 with huge motors on them. And the canal that feeds them
17 is dug and it reaches the east main drain. And another
18 plant, between Elverta Road and Elkhorn Road, which was
19 not -- which was put there, I think, in the early 1970s;
20 and then up on the north end, which feeds into the Natomas
21 crass canal, the pumping plant, which may have been there
22 previously, but the whole system was increased in capacity
23 and that pumping plant can actually drain water from the
24 south end of the Natomas area by pulling it up the central
25 main drain canal and pumping it into the Natomas

1 cross-canal.

2 Now, each project that's ever brought before your
3 Board promises an insignificant increase in the water
4 elevation. Well, now the Pleasant Grove area, as
5 Mr. Wallace has explained, is suffering under a hundred
6 years of insignificant increases in elevation increases.

7 The SAFCA report talked about the 1957 criteria.
8 I failed to understand what this criteria is since the
9 flood that I lived through occurred in 1955.

10 PRESIDENT CARTER: One more minute.

11 MR. BORGMAN: And these recommendation districts
12 date back to 1907, if I'm not mistaken. What was the
13 criteria at that time?

14 Are these projects that are being brought before
15 you, is this just another round of raising levees? This
16 area raises their levee, the other area has to raise their
17 levees because the water elevations are becoming higher?

18 It is the philosophy of flood control -- is that
19 to make sure that floods somewhere else first? No project
20 should be approved by this Board that does not
21 significantly reduce water elevations in the river system.
22 That is the only way to protect Sacramento and the
23 surrounding areas.

24 Thank you.

25 PRESIDENT CARTER: Thank you.

1 Are there any other members of the public that
2 wish to address the Board on unagendized items?

3 Okay. Thank you very much.

4 We'll move on. We're at Three Rivers Levee
5 Improvement Authority Monthly Report.

6 Mr. Brunner? Good morning.

7 MR. BRUNNER: Good morning. I'm Paul Brunner, the
8 Three Rivers Levee Improvement Authority executive
9 director.

10 And first I want to just say thank you for keeping
11 our item on the agenda. It's an important item. And
12 because of that, I will be very brief today for my report.

13 We have our monthly report that I would like for
14 you to refer to. There's really two items that I would
15 address. The first one was going to be in more detail on
16 Segment 2 and what we're dealing with, but you are going
17 to hear a lot about that on the Feather River during our
18 application and discussion. So I'm going to save you
19 that, for that time.

20 The other item I would like to mention is on
21 page 3, is on our funding update, Scott Shapiro did
22 mention that briefly during his comments a few minutes
23 ago. We have been able to make significant process with
24 the state in the Prop 1E funding, and I know that's
25 important to us all. We did receive a template from the

1 state. All Corps applicants did in the early December
2 time period. We're working through that with them now. I
3 really foresee that we'll be able to have some type of
4 agreement perhaps signed in the late January time period,
5 and that's very significant for us.

6 This date worked very diligently with us, and I
7 commend them for this, that they were able to take our
8 advice that they work very much with DGS to allow us to
9 get direct payments. So in the template that we have,
10 we'll be able to make direct payments on land purchases,
11 not a reimbursement mode. In fact, the agreement is joint
12 powers -- what is it, joint powers of execution agreement
13 or something like that -- not a grant. The way that they
14 have structured the agreement is to allow us to have
15 direct payments for land acquisition and also direct
16 payments for construction.

17 And once -- so if we were able to get the
18 encroachment permit and go through the other hurdles that
19 we had to go through, we would be able to go and start the
20 project aggressively and have the cash flow to accomplish
21 the work. So I take that as a very positive event for us
22 in moving forward. So we're making very good progress on
23 that. And that's really the key update, I think, for the
24 meeting other than for Segment 2, which you will hear
25 about that later on.

1 So I'm going to pause and ask for questions on our
2 monthly report.

3 SECRETARY DOHERTY: Page 2, the trench -- slurry
4 wall trench that collapsed --

5 MR. BRUNNER: Yes.

6 SECRETARY DOHERTY: So how has that all worked
7 out?

8 MR. BRUNNER: That has worked out -- we know that
9 we have additional work to do. And this is on Segment 3
10 on the Feather where we had the trench collapse. We did
11 work with a contractor. We had a stability berm that we
12 worked with your staff on. We have an encroachment
13 permit. We've installed it. It is there. We're
14 monitoring it closely during the winter season.

15 Next year during the construction season, we know
16 we need to go back in, readdress that issue, and fix it
17 with the contractor for the permit solution. But right
18 now, we have the temporary fix in, and we think it would
19 work fine during the winter.

20 SECRETARY DOHERTY: So will you be digging the
21 trench again during the dry season?

22 MR. BRUNNER: That remains to be seen as to
23 whether or not we will do that. We need to work with
24 staff and with our engineers as to exactly what the fix
25 will be. And we haven't worked that out totally yet.

1 There is that chance that we would have to go back and
2 re-excavate.

3 SECRETARY DOHERTY: And on page 4, "Qwest obtained
4 the encroachment permit for this crossing. There's no
5 change to this item."

6 So what's going to happen on their application?

7 MR. BRUNNER: Well, on their application on Qwest,
8 that's the item that we're working with Rec Board staff
9 on. And that applied to what will go forward. And I
10 don't think it has really raised to a very high level of
11 intention, not only for their staff -- Rec Board staff,
12 but also my staff. If it's the desire to push that. We
13 could. We've identified the issue for that. But it isn't
14 one of the key items that we're going to be pushing.

15 PRESIDENT CARTER: Any other questions for
16 Mr. Brunner?

17 Thank you.

18 MR. BRUNNER: Thank you.

19 PRESIDENT CARTER: Mr. Rice, do you want to
20 address the Board on this item?

21 MR. RICE: Thank you. Thomas Rice, Rice River
22 Ranch.

23 As I realize we have a very full agenda today, I'm
24 going to be extremely brief. Of course I would first like
25 to start by thanking the Board and their staff for their

1 efforts and concern in helping to both encourage and
2 mediate an agreement between Rice River Ranch and TRLIA.
3 We have in place a potential solution that provides the
4 same desired high standard of public safety while still
5 working to preserve valuable sustainable agriculture.

6 With the acceptance of a key alignment adjustment
7 part of this by the Army Corps of Engineers, there should
8 not be any on obstacles now for TRLIA fulfilling this
9 agreement.

10 Rice River Ranch is still waiting for confirmation
11 of this agreement in writing. We realize TRLIA is still
12 waiting on the Army Corps for some of that as well. But
13 in the meantime, we are proceeding at full speed working
14 in good faith towards satisfying our part of the
15 agreements.

16 All facets of this project, including the elements
17 of this agreement, need to proceed in a timely manner. We
18 all need to get this work done. Rice River Ranch is
19 acting with due diligence so as to avoid being a roadblock
20 or a delaying factor here. But this does require timely
21 and proper action on the part of the TRLIA as well.

22 We would ask this Board and your staff to continue
23 to hold TRLIA to their agreement in word and deed and to
24 make proper and timely execution of this full agreement
25 with Rice River Ranch, a required condition of the actual

1 encroachment permit.

2 I thank you again for your time, your attention,
3 and your patience. And I will gladly take any questions.

4 PRESIDENT CARTER: Any questions for Mr. Rice?

5 VICE PRESIDENT HODGKINS: I just would like to
6 thank you, Mr. Rice. There are other applicants who are
7 eventually going to be coming before the Board. Just to
8 let you know, it's important to work with the property
9 owners who are affected by your projects to try to find a
10 way to work with them. And this is an example. It took a
11 while, and I know there's different impressions about when
12 it should have been done, but it did happen and it can be
13 done.

14 So thank you.

15 PRESIDENT CARTER: Thank you very much.

16 Mr. Brunner, did you have anything else on your
17 monthly report?

18 MR. BRUNNER: No.

19 PRESIDENT CARTER: Okay. Very good.

20 We'll move along. Okay. We're on to Item 5A,
21 Mitigation for Tisdale Bypass Rehabilitation Project at
22 Colusa-Sacramento River State Recreation Area, Application
23 No. 18312 BD, Colusa County.

24 Mr. McGrath? Good morning.

25 MR. McGRATH: Good morning, President Carter,

1 General Manager Jay Punia, and Board.

2 My name is Eric McGrath. I represent the
3 Department of Water Resources, Division of Flood
4 Management. I am a senior engineer within the Flood
5 Maintenance Office.

6 I am here today to ask for the Board's approval of
7 an encroachment permit to perform mitigation planting for
8 the Tisdale Bypass Channel Rehabilitation Project.

9 (Thereupon an overhead presentation was
10 presented as follows.)

11 MR. McGRATH: I'm going to give you some of the
12 history of this project and explain the need for this
13 permit.

14 --o0o--

15 MR. McGRATH: First, I would like to thank you and
16 commend the interagency cooperations witnessed throughout
17 the Tisdale Bypass Rehabilitation Project. There was a
18 lot of trust and teamwork amongst the agencies to help the
19 project become reality.

20 1.8 million cubic yards of sediment was removed
21 from within the Tisdale Bypass expeditiously this year.
22 The project restored hydraulic function, relieving stress
23 on the Sacramento River levees downstream of this weir.

24 And as you can see in this picture, the bypass now
25 has a clear channel to convey the flood flows.

1 At the time the Tisdale Bypass Rehabilitation
2 Project was initiated, a mitigation site for the loss of
3 riparian forest had yet to be identified.

4 Interagency partnerships helped DWR identify a
5 mitigation site that is owned by the California Department
6 of Parks and Recreation and was being planned for a future
7 restoration project. So I just wanted to thank the
8 cooperation amongst all the agencies to get this project
9 done.

10 --o0o--

11 MR. McGRATH: So the site that was chosen for the
12 mitigation is located on the right side of the Sacramento
13 River at river mile 146 in Colusa County about 1 mile
14 north of the city of Colusa.

15 The site is currently a 1394-acre parcel used for
16 growing lima beans and is commonly referred to as the Ward
17 Tract.

18 Colusa Bypass is immediately to the north-east of
19 the site.

20 --o0o--

21 MR. McGRATH: In the process of removing sediment
22 from the Tisdale Bypass, 28.5 acres of riparian forest
23 were removed in order to restore the hydraulic function;
24 DWR is required to mitigate that loss of habitat by
25 planting 85.5 acres, of which about 80 acres will be

1 planted at an off-site location.

2 --o0o--

3 MR. McGRATH: This site was chosen because it was
4 previously forested and had a similar habitat value to
5 that of Tisdale Bypass.

6 The land is owned by California State Parks and
7 Recreation and they have been pursuing the restoration
8 project on this site. The site can accommodate mitigation
9 requirements for the Tisdale project and has room for an
10 additional 26.5 acres of riparian forest which DWR will
11 seek mitigation credit for future Sacramento River flood
12 control projects.

13 --o0o--

14 MR. McGRATH: This slide shows the layout of the
15 plant communities that are projected to be planted within
16 the project area. Note that there's a grassland and
17 savannah area that are aligned with the flood flows that
18 would allow flows to pass unrestricted. Also, there's no
19 elderberries in the mitigation side.

20 --o0o--

21 MR. McGRATH: Ayers Associates, a private
22 consultant, developed a flow 2D model for hydraulic impact
23 of this project between Princeton and Colusa. Variations
24 in stage, flow patterns, and velocities were evaluated for
25 existing conditions and for the proposed conditions.

1 Start from DWR, the Board, and the Corps performed
2 a thorough review of this model. A detailed hydraulic
3 study was distributed in the packet to the Board.

4 --o0o--

5 MR. McGRATH: A brief summary of the hydraulic
6 model results. On this slide, it shows the net change in
7 water surface elevation. And the changes in the water
8 surface are isolated to the northern boundary of the
9 forested area, which show the maximum increase of
10 1.8 inches.

11 --o0o--

12 MR. McGRATH: In this slide, it shows the changes
13 in velocity. The existing and post-restoration velocities
14 were evaluated and this video shows the variance in these
15 velocities.

16 Four levee sites that have existing high
17 velocities were evaluated to see if there would be any
18 additional impact. And at those locations, they were
19 determined competent to withstand erosion because they are
20 currently protected and the increase in velocity is very
21 minimal.

22 SECRETARY DOHERTY: Mr. McGrath, may I interrupt
23 you for a moment, please.

24 MR. McGRATH: Sure.

25 SECRETARY DOHERTY: You said a raise in elevation

1 of 1.8 inches?

2 MR. McGRATH: Correct.

3 SECRETARY DOHERTY: Is that going through the
4 grasslands, or is that causing a raise in the river of
5 1.8?

6 MR. McGRATH: That is a raise in the river of 1.8
7 directly in front of where the forest is planted.

8 SECRETARY DOHERTY: So it may have a cumulative
9 effect as it goes down river, huh?

10 MR. McGRATH: No, it doesn't. The model shows it.
11 In the picture, you can see up there on the slide that
12 it's isolated to just the area north of the site.

13 SECRETARY DOHERTY: All right.

14 MR. McGRATH: The schedule to complete the
15 mitigation work is as follows: In the winter of this
16 year, for the seeds are in cold storage as we speak, and
17 the plan is to get these seeds into nurseries and groomed
18 throughout this winter.

19 And fall 2008, an irrigation system will be
20 installed on the site. In spring of '09, the seedlings
21 will be transplanted from the nurseries and on to the
22 site.

23 Fall of '09, grasslands will be seeded.

24 And between the years of 2009 and 2011, part of
25 the permit requires DWR to maintain at least 80 percent

1 survival rate for the growing plants in that three-year
2 period. So we'll have to go back in there during those
3 times and make sure the plants are surviving as
4 anticipated.

5 And following the maintenance period, DWR is also
6 required to monitor the site for an additional seven
7 years. The grassland and savannah areas will be
8 maintained regularly by DWR and maintenance staff and
9 maintain flood banks through that area.

10 --o0o--

11 MR. McGRATH: So at this time, DWR requests the
12 Board's approval of 18312-BD to plant 139.4 acres native
13 trees, shrubs and grasses as described.

14 Thank you.

15 PRESIDENT CARTER: Thank you.

16 Thank you. Are there any questions for
17 Mr. McGrath?

18 Mr. McGrath -- I'm sorry. Teri, did you have
19 something?

20 MEMBER RIE: Go ahead.

21 PRESIDENT CARTER: I had the opportunity to
22 address the presentation that was presented to the public
23 in Colusa. And there was an excellent presentation made
24 by the group, by Ayers, in regard to the hydraulic model.
25 The one thing that was surprising to me was that what was

1 stated there, and I don't know that they have gone back
2 and reconfirmed this or not, that the system as it was
3 built was not operating as designed. And the message was
4 that the -- where the river passes by Colusa, south of the
5 project area of the water project, that channel capacity
6 was not great enough to pass the design flow; and that, in
7 fact, what was happening was that more water was flowing
8 out of the Colusa Weir as a result and more than was
9 designed.

10 Is that still the conclusion of the hydraulic
11 analysis?

12 MR. McGRATH: Yes. As far as I understand, the
13 flow splits that were originally designed and what they
14 are existing today, do vary. So what was said at that
15 meeting still stands, yes.

16 PRESIDENT CARTER: Okay. And the -- so by virtue
17 of the project, raising the water surface elevation a
18 little less than 2 inches, that means that more water is
19 going to flow out of the Colusa Weir.

20 MR. McGRATH: It's isolated to the other side of
21 the river channel, and it doesn't show any increases in
22 flows going in that direction.

23 PRESIDENT CARTER: So what you are saying is that
24 there's no net impact in the flow split of the project?

25 MR. McGRATH: Correct.

1 PRESIDENT CARTER: Ms. Rie, did you have a
2 question?

3 MEMBER RIE: No. That's okay.

4 PRESIDENT CARTER: Any other questions for
5 Mr. McGrath?

6 SECRETARY DOHERTY: I would just like it to be a
7 part of the record that I think it's unfair that we had to
8 provide mitigation when the situation in the Tisdale Weir
9 was caused by negligence of the state. I just want that a
10 part of the record. And it's something that we need to
11 address in future projects.

12 PRESIDENT CARTER: So what you are saying is, if
13 we allow or if we neglect maintenance and we have a
14 habitat development develop and then we have to remove it,
15 we have to mitigate for it?

16 SECRETARY DOHERTY: And I think it's not right.

17 PRESIDENT CARTER: Okay.

18 VICE PRESIDENT HODGKINS: Along those lines, how
19 much is this mitigation costing?

20 MR. McGRATH: Approximately \$2 million.

21 VICE PRESIDENT HODGKINS: How much?

22 MR. McGRATH: 2 million.

23 VICE PRESIDENT HODGKINS: 2 million.

24 And I think it's -- I would just like to make a
25 more detailed point about negligence of the state. This

1 is the result of inadequate funding for maintenance that
2 the Department of Water Resources is required to do.

3 Now, the Board is going to come to understand, as
4 we go along, the overall budget is basically under the
5 control of the Department of Finance. And I'm going to
6 get myself in trouble with them at some point.

7 But I guess the point I want to make here is, the
8 Board -- the process here is if you're part of the
9 administration, which is the Department of Finance, you're
10 told to shut up. I don't think we can continue to do that
11 if in the future -- and we have adequate funding right
12 now. But if in the future, maintenance is inadequately
13 funded, I think the Board is going to have to run the risk
14 of getting crosswise with our bosses and go and speak to
15 make sure the legislature and, for that matter, the
16 Department of Finance understands, if you don't pay for it
17 now, you will pay more later.

18 And so I will shut up.

19 PRESIDENT CARTER: Thank you. Any other comments?

20 Okay. We'll entertain a motion from the Board.

21 MEMBER RIE: Move to approve.

22 PRESIDENT CARTER: A motion to approve.

23 SECRETARY DOHERTY: I will second.

24 PRESIDENT CARTER: A motion -- a second to the
25 motion.

1 Any further discussion?

2 All those in favor, indicate by saying "aye."

3 (Ayes.)

4 PRESIDENT CARTER: And opposed?

5 Motion carries.

6 Thank you very much, Mr. McGrath.

7 At this time, we are going to -- we're a little
8 ahead of schedule, believe it or not. What we can do is
9 take the Report of the Activities of the General Manager
10 at this point.

11 GENERAL MANAGER PUNIA: Lorraine has some
12 announcement.

13 MS. PENDLEBURY: You had a card. Someone wanted
14 to speak about 5A.

15 PRESIDENT CARTER: Oh, I apologize.

16 Ms. Reichenberg, are you still -- would you like
17 to address this item? I apologize.

18 MS. REICHENBERG: Thank you, Board members. My
19 comments were in support of the project from the
20 Department of Parks and Recreation.

21 Thank you.

22 PRESIDENT CARTER: I apologize. An oversight on
23 my part.

24 Would you all like to take a 15-minute break?

25 Let's recess for 15 minutes, ladies and gentlemen.

1 (Thereupon a break was taken in
2 proceedings.)

3 PRESIDENT CARTER: Ladies and gentlemen, we'll go
4 ahead and continue with our meeting.

5 We are on Item 5B. This is an application, Levee
6 District No. 1 of Sutter County Application No. 18191,
7 Sutter County.

8 Mr. Fua, good morning.

9 SUPERVISING ENGINEER FUA: Good morning, President
10 Carter and members of the Board.

11 For the Rec Board, my name is Dan Fua. I'm a
12 supervising engineer for the State Reclamation Board.

13 Before I begin with my presentation on the Levee
14 District No. 1 Sutter County Star Bend Setback Levee
15 Project, I would like to make sure that the Board has
16 received a copy of my completed staff report. It was
17 e-mailed to you on Tuesday, and Lorraine gave you a hard
18 copy yesterday.

19 (Thereupon an overhead presentation was
20 presented as follows.)

21 SUPERVISING ENGINEER FUA: I assume that everybody
22 has a copy of it.

23 Okay. Levee District No. 1, Sutter County, is
24 proposing to construct a backup levee that will eventually
25 replace the project levee along the right bank of the

1 Feather River. LD1 has conducted a feasibility study,
2 also conducted hydrologic studies, geotechnical
3 investigations, and completed 60 percent of the drawings
4 and specifications of the proposed setback levee.

5 --o0o--

6 SUPERVISING ENGINEER FUA: So today, Levee
7 District No. 1 is asking the Board to consider sending a
8 letter to the U.S. Army Corps of Engineers under Section
9 408 of the U.S. Code, title 23, requesting approval of
10 their proposed project.

11 --o0o--

12 SUPERVISING ENGINEER FUA: These are the documents
13 that Levee District 1 submitted to the Board and reviewed
14 by staff -- the feasibility report dated April 2007; a
15 geotechnical report dated October 20, 2006; and an
16 addendum to the geotechnical report dated November 21,
17 2007. It also submitted and staff has reviewed the
18 hydrology report dated November 21, 2007, and the drawings
19 and specifications which are 60 percent complete.

20 --o0o--

21 SUPERVISING ENGINEER FUA: This is the map of the
22 project area. This is Feather River right here and this
23 is the west levee. It's a project levee. And this is
24 their proposed setback levee location.

25 The stretch of this levee is maintained by Levee

1 District 1.

2 --o0o--

3 SUPERVISING ENGINEER FUA: This is a map of the
4 original area, which shows you some of the other flood
5 control projects that are -- were built recently or were
6 being planned.

7 This is the Bear River Setback Levee, which was
8 completed by Three Rivers in 2006. This is the project
9 right here. This is the proposed setback levee by Three
10 Rivers, the six-and-a-half-mile east levee setback,
11 proposed by Three Rivers.

12 This is the Shanghai Bend Setback Levee which was
13 built by the U.S. Army Corps of Engineers in 1998 and
14 again, this is the proposed Star Bend Setback Levee.

15 --o0o--

16 SUPERVISING ENGINEER FUA: This is an aerial map
17 of the project location.

18 Again, this is the Feather River. This is the
19 proposed setback levee, Star Bend. This is the existing
20 project levee, and this is the levee that Levee District 1
21 is proposing to replace. This is about 4400 feet long and
22 the proposed setback levee is about 3,400 feet long.

23 --o0o--

24 SUPERVISING ENGINEER FUA: This section of the
25 levee has a history of underseepage problem. A seepage

1 ditch was built many, many years ago, about 1940, to
2 intercept the underseepage water.

3 In about 1986, this filter drain was built by the
4 U.S. Army Corps of Engineers again to correct the
5 underseepage problem. Both in the 1986 and 1997 floods,
6 severe underseepage problems occurred in this area
7 resulting in the formation of boils. In 1998, the Corps
8 rehabilitated the existing toe drain which restored the
9 levee height of this levee.

10 The proposed setback levee would require purchase
11 of 58 acres of existing agricultural land. About 50 acres
12 of this is on the water side of the setback levee. And it
13 is proposed, about 20 acres of this 50 acres will be
14 used -- or will be added to the existing O'Connor Lakes
15 restoration area for wildlife habitat enhancement. The
16 remaining 30 acres will be used for future ecosystem
17 restoration projects.

18 The proposed levee will be constructed with a
19 slurry foundation cutoff wall, will be built at the same
20 height as the existing levee with a land side -- water
21 side slope of 3 to 1 and a crest with 20 feet.

22 Materials for the embankment will be coming from
23 this area here, the O'Connor Lakes area, and part of it
24 will be coming from the old levee. The district is
25 proposing to build this setback levee in one construction

1 season with the degradation of the existing levee
2 embankment to begin when the new setback levee is about
3 two-thirds its finished height.

4 Existing -- other existing structures here include
5 the Star Bend pumping plant and the project will also
6 require the reconstruction of the irrigation system by
7 extending the outfall pipes. And also we brought in
8 irrigation pipes, constructing a closure device on the
9 levee, and construction of the flow distribution system.

10 --o0o--

11 SUPERVISING ENGINEER FUA: LD1, as I said earlier,
12 conducted a feasibility study, and in the feasibility
13 study they evaluated four alternatives. First alternative
14 evaluated was in-place strengthening consisting of a
15 slurry wall, widening the crest of the levee, and
16 resloping the water side and land side slope into -- to 3
17 to 1; and also, constructing a rock slope protection of
18 the levee water side slope to address the reoccurring
19 erosion problem downstream of the Star Bend pumping plant.
20 They also evaluated three setback alignments, one for the
21 3,400 feet; one for 4,155 feet, and the third one for the
22 length of about 4,400 feet.

23 Evaluation of the three setback alignments with
24 respect to reduction in velocity indicate the increase
25 setback length does not appreciably improve the hydraulic

1 benefits. Therefore, they selected the shortest
2 alignment, the 3,400 feet setback.

3 --oOo--

4 SUPERVISING ENGINEER FUA: This is the geologic
5 profile of the subsurface conditions along proposed
6 setback alignment. This profile was generated from the
7 data obtained from the 2006 and 2007 subsurface
8 explorations consisting of boreholes, test pits, and
9 penetration tests.

10 So essentially, the geotechnical findings by LD1
11 is that essentially the condition -- the foundation
12 condition of the alignment is basically located -- most in
13 the Modesto formation. But one to 3 feet of soil,
14 topsoil, is alluvium. But below that, it's Modesto
15 formation. So about 5 to 25 feet thick layer of very hard
16 clay, which is essentially the top of the Modesto
17 formation, underlies the foundation.

18 But 20 to 50 feet below ground surface is about 10
19 to 45 feet thick layer of clay silt, adequate to determine
20 the slurry cutoff wall. This is the slurry cutoff wall
21 right here. It's about -- this shell or cutoff wall is
22 about 42 feet and the deeper one is about 60 feet.

23 Also, the geotechnical studies also found that the
24 subsurface soil conditions north, south, and west of the
25 proposed alignment are similar. Therefore, there is no

1 benefit for the district to move the setback alignment to
2 the west.

3 And with the construction of the slurry wall, the
4 exit gradient for underseepage is reduced from .6 to .1.

5 --o0o--

6 SUPERVISING ENGINEER FUA: So essentially, this is
7 a summary of the geotechnical findings. One to three feet
8 below the ground surface, 15 to 20 feet for a very thick
9 layer of very hard silt clay; 20 to 50 feet below ground
10 surface there's about 10 to 45 feet thick layer of clay
11 silt adequate to determine the slurry cutoff wall.
12 Subsurface soil conditions north, south, and west of the
13 proposed alignment are similar. So there's no benefit to
14 move it farther to the west. And the soil-bentonite
15 slurry cutoff wall that is incorporated in the design of
16 the setback levee reduced the gradient from .6 to less
17 than .1.

18 --o0o--

19 SUPERVISING ENGINEER FUA: The district also
20 reviewed past geomorphic studies conducted by a number of
21 entities. In 1991, a Water Engineering Technology Study,
22 a geomorphic study, predicted that 50 years -- it will
23 take about 50 years for this levee to be encroached. At
24 that time, there was about 80 feet of bends between the
25 river channel and the levee.

1 In 2006, the district measured this area here and
2 determined that it is actually only about 30 feet of bank
3 remaining. And that's after 15 years. Using that rate,
4 migration rate, it would take about nine years to encroach
5 the levee here.

6 So obviously the water engineering technology,
7 prediction was too conservative. In 2004, the Department
8 of Resources also conducted a geomorphic study on the
9 Feather River, and they predicted this -- the prediction
10 is that their rate of migration of the Feather River is
11 about 1.7 feet per year. And that means it would take
12 about 15 years for the channel, the Feather River, to
13 encroach on the existing levee.

14 --o0o--

15 SUPERVISING ENGINEER FUA: This is a summary of
16 the geomorphic studies I just told you.

17 So in summary, if nothing is done for this portion
18 of the levee, it would -- within the next 10 to 20 years,
19 this levee will be encroached, and because of the high
20 velocity of this portion of the river, erosion potential
21 is very high. And the district has chosen to move this
22 levee to the west.

23 --o0o--

24 SUPERVISING ENGINEER FUA: The district also
25 conducted hydraulic analysis and, this is the aerial map

1 of the extent of the hydraulic analysis. It actually
2 starts from river mile 15 up to river mile 23. They
3 conducted two types of modeling -- one is the HEC-RAS
4 developed by the U.S. Army Corps of Engineers and modified
5 by MBK Engineers; and they also used the two-dimensional
6 modeling, the RMA2.

7 --o0o--

8 SUPERVISING ENGINEER FUA: As I said, they
9 conducted two HEC-RAS, and one RMA2 modeling. The first
10 HEC-RAS one was with the Three Rivers Setback Levee, the
11 proposed six and a half miles of setback levee.

12 And the findings of that hydraulic analysis is
13 that the maximum water surface elevation reduction is
14 about .24 feet at river mile 18.25, and there is also
15 water surface elevation reduction upstream of this river
16 mile.

17 That's with the 1957 design flow. The maximum
18 water -- there is also a water rise elevation -- a water
19 rise as a result of this project. And it's about .05
20 foot, which is about half an inch, at river mile 16.76,
21 and about .03 feet at river mile 16.6. That was the 1957
22 design flow.

23 For the HEC-RAS run at the Three Rivers Setback
24 Levee, this is the result. The maximum water surface
25 elevation reduction is about .34 feet at river mile 18.25

1 at the 200-year flow. I use the 200-year flow because the
2 1957 design flow was not run.

3 And there's also a maximum rise in water surface
4 elevation at river mile 16.57 of about .04 foot.

5 --o0o--

6 SUPERVISING ENGINEER FUA: This is the result of
7 the RMA2 model. As I've said, the model provides a better
8 description of flow fields for a meandering and curving
9 channel that exists, particularly along the right bank of
10 the Feather River at Star Bend. That's why the district
11 usually uses the results of these hydraulic analysis to
12 justify the project.

13 So the finding of this dimensional modeling, the
14 maximum water surface elevation reduction is about
15 .64 feet between river mile and 18.0 and 18.25 with lesser
16 reductions upstream. Water surface elevation rises from
17 .01 feet to about 1.1 feet between river mile 17.995 and
18 river mile 17.495.

19 Velocity along the right banks are reduced 4 to
20 5 feet per second to 3 feet per second.

21 Originally it's about 7 to 8 feet per second. Now
22 it's just 3 feet per second.

23 --o0o--

24 SUPERVISING ENGINEER FUA: So this is a graphical
25 representation of the RMA2 modeling results. This is the

1 water surface elevation for the 100-year flow. This is
2 the water surface elevations for the design flow, and this
3 is the water surface elevations for the 200-year flow. So
4 as you can see, the project reduces the water surface
5 elevations for all three flows.

6 And the water rise, that I mentioned to you in my
7 previous slides, are located here, close to river mile 18.
8 And for the 20-year flow it's about 1.1 feet of water
9 surface rise in elevation.

10 And the rise is explained in the fact -- the fact
11 that there is a bend in this location, so therefore,
12 because of that bend, there is a super elevation formed so
13 that actually the water surface elevation here with the
14 levee impinging on the flow is actually lower. So it
15 started very low, right at this location here. When the
16 levee is removed, the water surface elevation goes back to
17 the normal depth. So that's why you have this rise here.

18 I believe that these rises are not significant,
19 because as you can see, this is the top of the levee
20 height here, the existing levee. And the proposed setback
21 levee will be the same height. It's well contained within
22 the freeboard. And it does not encroach the 1957 design
23 profile. So as far as staff is concerned, these rises in
24 water surface elevation are not significant.

25 --o0o--

1 SUPERVISING ENGINEER FUA: This is another
2 graphical representation of the RMA2 model on the left
3 bank. So it's the same. There is hydraulic water surface
4 reductions. There are some rises in water surface
5 elevation.

6 --o0o--

7 SUPERVISING ENGINEER FUA: So in summary, the
8 alignment proposed by LD1 is located in a geotechnically
9 sound formation. There are no significant impacts. In
10 fact, there are a lot of benefits for this project.

11 The setback levee is subject to less erosion
12 protection because the velocity will be reduced. And the
13 setback levee will be constructed in accordance with
14 existing federal and state standards.

15 So staff recommendation is for the Board to send
16 the 408 letter to the Corps. And I have a draft copy of
17 that letter in the packets.

18 So with that, that concludes my presentation and
19 if you have any questions, I would be glad to answer them.

20 PRESIDENT CARTER: Are there any questions for Mr.
21 Fua?

22 SECRETARY DOHERTY: My questions and concerns are,
23 first of all, in considering this project, was the
24 proposed TRLIA's setback considered?

25 SUPERVISING ENGINEER FUA: Significantly, Lady

1 Bug.

2 SECRETARY DOHERTY: In other words, was TRLIA's
3 setback levee considered?

4 SUPERVISING ENGINEER FUA: Yes. And one of the
5 model runs, the HEC-RAS, the one-dimensional model, yes,
6 TRLIA's six and a half mile levee project was considered.
7 On the RMA2 model, it was not.

8 SECRETARY DOHERTY: My next question, is the
9 restoration on O'Connor Lakes, will there have to be
10 mitigation for all of that? Because there was a lot of
11 mitigation work.

12 SUPERVISING ENGINEER FUA: The 50 acres of land on
13 the waterside, 20 acres of that will be added to the
14 O'Connor Lakes area. Whether additional mitigation is
15 required, I don't know. I will have to ask LD1 for that.

16 SECRETARY DOHERTY: There was somebody here from
17 River Partners.

18 MR. TWITCHELL: Jeff Twitchell, Wood Rodgers,
19 district engineer for Levee District 1.

20 This project actually serves as an expansion of
21 the O'Connor Lakes Restoration Area. It's going to add up
22 to 50 acres for that. There will be some temporary
23 disturbance of that restoration -- some of the grass we
24 planted but not some of the more mature plants as part of
25 borrow site activities.

1 SECRETARY DOHERTY: As long as you're there, the
2 borrow site activities, that bothers me because everybody
3 talks about the sand lenses in levees and they are just
4 doing all these inspections and doing core samplings. I
5 walked out through that area. It's nothing but sand.

6 MR. TWITCHELL: It primarily is sand on the top.
7 I'm going to say 3 -- depending where you are on that
8 side, top 3 to 5, 6, 7 feet in areas. But underlaying
9 that, there is some higher clays and silts that is usable.
10 And actually, that site that I'm referring to was used as
11 a borrow site for the further upstream levee back in
12 '98 for the Shanghai Bend project.

13 SECRETARY DOHERTY: That's part of the problem is
14 we're using soil like this on some of the older levees.
15 So how far down are you going to have to go before you are
16 going to hit the soil that you can use to borrow?

17 MR. TWITCHELL: We're going to -- it's relatively
18 shallow where we're looking at. I do have a package here
19 that highlights the areas in that -- in the O'Connor Lakes
20 area that you can -- you know, it will help you understand
21 where we're getting this material from. But it's
22 relatively shallow. Three to 12 feet is what we're
23 looking at for good material.

24 SECRETARY DOHERTY: Okay. Thank you.

25 SUPERVISING ENGINEER FUA: And in our permit, we

1 will specify what kind -- we have a standard, but what
2 kind of materials they can use for the embankments. So
3 they just can't use any material there.

4 So in fact, we're looking at their tests right now
5 and we know that currently the test results do not meet
6 our standards. So we know that they will need to do some
7 grading, maybe drying and mixing.

8 SECRETARY DOHERTY: Now that really did concern
9 me, because having walked out through those areas, I
10 thought oh, my gosh, when I read in here you were going to
11 be using that.

12 SUPERVISING ENGINEER FUA: We have standards for
13 embankment materials.

14 MEMBER BROWN: You were running compaction tests
15 as you were placing material, I presume?

16 SUPERVISING ENGINEER FUA: Yes. As I understand,
17 to 95 percent.

18 PRESIDENT CARTER: Ms. Suarez?

19 MEMBER SUAREZ: I actually don't have a question.
20 I just wanted to thank Mr. Fua for his presentation. It
21 was very complete and very understandable and thorough.
22 So I appreciate that.

23 SUPERVISING ENGINEER FUA: Thank you. Thank you
24 for recognizing the hard effort that we did for this
25 project and in a short period of time.

1 MEMBER BURROUGHS: I -- yes, go ahead, Jay.

2 GENERAL MANAGER PUNIA: I just want to make a
3 comment too, on this project, to bring it to the Board
4 today. There's a lot of people in the audience who worked
5 very hard including DWR staff, providing input from George
6 Qualley's shop, Jeff Twitchell and his team, and obviously
7 Dan Fua to make it happen.

8 PRESIDENT CARTER: Ms. Burroughs?

9 MEMBER BURROUGHS: Yes. I would like to move that
10 we approve sending a draft letter for the 408 process.

11 PRESIDENT CARTER: Okay. We do have some public
12 comment on that.

13 MEMBER BURROUGHS: Oh, sorry. I will wait for
14 that.

15 PRESIDENT CARTER: Are there any other questions
16 for Mr. Fua on his staff report?

17 Okay. Mr. Morgan?

18 LEGAL COUNSEL MORGAN: I would just like to make a
19 recommendation for a slight change to the text of the
20 letter for you to consider and also for the public
21 comments as well, if they are going to be germane to this.

22 In the third paragraph where it now begins, "If
23 the proposed project, upon completion, is formally
24 incorporated within the federal project," I would
25 recommend that there be a sentence added at the beginning

1 that said -- it would say, "If the Corps approves this
2 request, the Board will consider authorizing the proposed
3 work by way of its own permit process."

4 And then continuing with what it has written, "If
5 the proposed project" and then add, "is ultimately
6 approved by the Board and" -- and then continue, "upon
7 completion, is formally incorporated," to make it clear
8 that this is not a project approval, and make it clear
9 that the applicant will come back to the Board for a
10 permit at the appropriate time, once we have received
11 permission from our federal partner to make the requested
12 changes.

13 PRESIDENT CARTER: Okay.

14 MEMBER RIE: I think that's a great idea,
15 Mr. Morgan. That certainly clarifies that we are not, in
16 fact, approving the permit at this point but are simply
17 putting in a request to the Corps for their comments.

18 Thank you.

19 PRESIDENT CARTER: Any other questions for Mr.
20 Fua?

21 Okay.

22 Mr. Twitchell, did you want to address the Board?
23 We asked you to -- if you have anything to add to Mr.
24 Fua's staff report, complete staff report.

25 MR. TWITCHELL: Yeah. I think his staff report

1 was very complete.

2 Just a couple points I want to provide. This
3 again is really -- there's some primary reasons for this
4 project and some secondary. Primary is, you know, we're
5 correcting a through underseepage problem. There's
6 potentially 25,000 people here at risk if a levee failure
7 does occur at this location.

8 As Dan mentioned, it does address geomorphology
9 and erosion concerns out at the site. And it also
10 provides ecorestoration opportunities that he mentioned.

11 I think this project, as Jay also mentioned, has
12 the support from DWR as an early implementation project.
13 I was reviewing your Board packets. I think there's a
14 memo from Keith Swanson in the package for your next item
15 indicating support for that project. And I just thought
16 you should know it should also be part of this
17 recommendation as well.

18 With that, unless anyone has any questions --

19 MEMBER RIE: Yes.

20 PRESIDENT CARTER: Yes.

21 MEMBER RIE: How much money are you receiving for
22 this project from the 1E bond money?

23 MR. TWITCHELL: We're looking for between 16 and
24 17 million. The total project cost is approaching
25 20 million, 21 million. The locals are putting -- have

1 put up and committed 5 million thus far for this
2 project -- 5 and a quarter.

3 MEMBER RIE: And are you entering into a financing
4 agreement with DWR or negotiating that at that point?

5 MR. TWITCHELL: We are negotiating that. We had a
6 meeting earlier along with TRLIA, and there's four
7 implementation projects. This is one of the four that are
8 all on those negotiations with DWR on that cost sharing
9 agreement.

10 MEMBER RIE: Okay. Great.

11 VICE PRESIDENT HODGKINS: I have a question for
12 somebody. Are you pursuing 104 on this project?

13 SUPERVISING ENGINEER FUA: Yes. But DWR staff is
14 going to do that maybe next month or in February.

15 VICE PRESIDENT HODGKINS: Okay. Thank you.

16 PRESIDENT CARTER: Any other questions for the
17 applicant, staff? Let's see.

18 Mr. Brunner, did you want to comment on this item?

19 MR. BRUNNER: Paul Brunner, the executive director
20 for Three Rivers.

21 I wanted to make one real brief comment. Three
22 Rivers does support this project. It's a companion
23 project to ours. It's the other side of the Feather
24 River. Jointly, the two setbacks will provide benefits,
25 hydraulic benefits. We think that it's needed to be done

1 to get rid of that choke point. You will see the benefits
2 when we talk to our project directly on the next topic,
3 and we'll show that better.

4 So thank you.

5 PRESIDENT CARTER: Any questions for Mr. Brunner?

6 I have a question maybe for staff. We're adding
7 to the O'Connor Lakes habitat project. Potentially with
8 the Three Rivers setback we're going to be adding about
9 more or less 1700 acres to the inside of a levee for
10 potential habitat restoration. We've added a tremendous
11 amount down at Bear River.

12 I'm wondering, is the State of California or the
13 Reclamation Board going to be able to get credit for all
14 of this, so that it will be some time before we really run
15 into environmental delays in relating to projects on
16 works, at least on the Feather and the Bear River?

17 SUPERVISING ENGINEER FUA: My understanding is
18 that you mitigate as you go. And I believe -- and TRLIA
19 can correct me. The mitigation measures that were
20 conducted by TRLIA were done as a mitigation measure for
21 the existing projects.

22 So there's no future credit for the mitigation
23 measures that have been done so far, because you mitigate
24 for something, and unless you're doing more than what the
25 mitigation requires, there's no credit.

1 PRESIDENT CARTER: So to the extent that we have
2 lands that become a part of the flood channel as part of
3 these setback projects but are in use other than
4 environmental habitat, it's to the state's best interest
5 to keep them out of habitat until we need mitigation
6 credit?

7 SUPERVISING ENGINEER FUA: I would agree with
8 that. In fact, I think that's what LD1 is doing. Out of
9 the 50 acres on the waterside, 30 acres of that is
10 reserved for future projects.

11 PRESIDENT CARTER: And so whose responsibility is
12 it to see that those lands aren't abandoned and just taken
13 over by nature and become habitat, and then we don't -- we
14 aren't -- the credit is not available?

15 SUPERVISING ENGINEER FUA: I don't know what the
16 arrangement between LD1 and DWR, who's going to -- who's
17 the owner of this, you know, land reserved for
18 environmental restoration. Maybe DWR will get it. Maybe
19 the Reclamation Board will get it.

20 PRESIDENT CARTER: Okay. I guess I would like us
21 to maybe pay attention to that as the project unfolds and
22 the others do as well.

23 LEGAL COUNSEL MORGAN: Just wanted to draw
24 attention -- I've been trying to avoid expressing too many
25 legal opinions about the effect of some of the new laws,

1 but I just wanted to draw your attention to the provisions
2 of AB 5, that talks about the ability of the Board to
3 establish mitigation banking in the future.

4 That will be something that I would recommend the
5 Board ask the Board's counsel in the new year about. And
6 since this is not the permit -- this is just a 408
7 process -- that might be something for the Board to
8 consider incorporating into the permit at that point.

9 VICE PRESIDENT HODGKINS: I would like to add to
10 that. I think President Carter's comment is just right
11 on, on here. Because in addition to the banking, we also
12 have the vegetation issue with the Corps, is saying
13 there's too much vegetation and the resource agencies are
14 saying, "Hey, you've cut down 90 percent of the riparian
15 vegetation in California."

16 So let's not miss opportunities to find places
17 where we can create riparian vegetation that will meet
18 both of those. And this is in no criticism to the staff
19 report. This is a new function, new challenge, for DWR
20 and the Rec Board in terms of banking. But we have to
21 remember, it's going to be a challenge and we cannot miss
22 opportunities.

23 Thank you.

24 PRESIDENT CARTER: Okay. Thank you. I do have
25 one other card. It may be mismarked. It's Stein Buer.

1 He may have meant 5D instead of 5B, and he's not here.

2 Okay. Very good.

3 I don't have any other cards.

4 Does anybody else wish to make any more comments,
5 Board staff?

6 MEMBER RIE: I have a question. Maybe the
7 applicant can answer this or maybe you, Dan. What's your
8 schedule to start construction and have you awarded a
9 contract or have you put the project out to bid? Do you
10 have a contractor on board?

11 MR. TWITCHELL: We're presently at the 60 percent
12 design. We're looking to go to construction June, July of
13 next year. We need the 408. That's why we're here. And
14 also the permit from this Board here and, you know, late
15 first quarter, early second quarter of next year. So
16 we're hoping to go to construction by June next year.

17 MEMBER RIE: Okay. Thanks.

18 PRESIDENT CARTER: Anything else?

19 We will entertain a motion to take action here.

20 SECRETARY DOHERTY: Rose Marie made the motion.

21 PRESIDENT CARTER: Oh, okay.

22 Do we have a second?

23 Her motion, as you recall, was to approve sending
24 the 408 letter. It didn't contemplate the changes that
25 Mr. Morgan had mentioned after her motion.

1 Where is Rose Marie?

2 SECRETARY DOHERTY: I don't know.

3 MEMBER BROWN: Do you need a second?

4 SECRETARY DOHERTY: Well, you will have to have a
5 first.

6 PRESIDENT CARTER: We can have a second on her
7 motion, and we can vote on that, but that does not include
8 the changes.

9 MEMBER BROWN: I will second her motion.

10 PRESIDENT CARTER: Okay. We have a motion and a
11 second.

12 MEMBER SUAREZ: So procedurally, how do we get the
13 excellent amendments that Mr. Morgan subjected into the --

14 PRESIDENT CARTER: One way is to vote down that
15 motion and make a new motion including incorporating the
16 changes, or the other way is to get Rose Marie back here
17 to amend her motion.

18 MEMBER BROWN: How about we get the motion again.

19 MEMBER RIE: How about another motion?

20 SECRETARY DOHERTY: Let it die for lack of a
21 second.

22 MEMBER BROWN: I withdraw my second.

23 PRESIDENT CARTER: Is there a second for Rose
24 Marie's motion to approve the 408 letter as submitted by
25 staff?

1 SECRETARY DOHERTY: Now we need a motion.

2 PRESIDENT CARTER: Okay. That motion dies.

3 Do we have another motion?

4 MEMBER RIE: I would move that we approve the 408
5 letter with Mr. Morgan's modifications, as stated, to make
6 it clear that we are not approving the permit but we are
7 simply asking for the Corps' comments.

8 MEMBER BROWN: I will second that motion,
9 Mr. Chair.

10 PRESIDENT CARTER: Okay. We have a motion and a
11 second to approve sending the letter to the -- a letter to
12 the Corps requesting 408 for them to initiate the 408
13 process with the changes suggested by Mr. Morgan, Legal
14 Counsel.

15 And a second?

16 Any questions on the motion? Any discussion?

17 All those in favor, indicate by saying "aye."

18 (Ayes.)

19 PRESIDENT CARTER: And opposed?

20 Motion carries.

21 Thank you.

22 SUPERVISING ENGINEER FUA: Thank you.

23 PRESIDENT CARTER: Thank you, Mr. Fua.

24 Once again, we find ourselves ahead of our
25 schedule, so I would in the interest of maybe getting out

1 early, let's continue with the Report of the Activities of
2 the General Manager.

3 Mr. Punia?

4 GENERAL MANAGER PUNIA: Good morning. Jay Punia,
5 general manager of the Board.

6 A few items I want to share with you. As most of
7 you already know, Steve has been selected to lead the
8 development of the State Plan of Flood Control, so he will
9 be leaving the Board as of end of this month, and will
10 start his new job in January. I think I'm in the process
11 of advertising the job so that we can bring a new chief
12 engineer as soon as possible. So a job announcement will
13 go into our job opportunity bulletin hopefully next week.

14 MEMBER RIE: Congratulations.

15 SECRETARY DOHERTY: Did you really want to leave
16 us?

17 CHIEF ENGINEER BRADLEY: Are you putting me on the
18 spot here?

19 SECRETARY DOHERTY: Yes.

20 CHIEF ENGINEER BRADLEY: Actually, I really
21 enjoyed working with the Board even though we're having a
22 difference of opinion this morning. It has been an
23 enjoyable process for me, and I've really, really liked
24 it.

25 It's a promotion. It's a chance. In a career,

1 you get very few opportunities to do a large project like
2 coming up with a new plan of flood control for the state.
3 It's an opportunity that at least what remains of my
4 working career would never come again. And it's just
5 something that I am looking forward to doing. It brings
6 together all of my past work history, and so I think it's
7 a very good fit. I'm nervous. There's a lot of pressure
8 on the job. It's going to be a very high profile job, a
9 lot to be done in a very short period of time. But I'm
10 actually looking forward to it. And I don't particularly
11 want to leave the Board, but, like I said, there are not
12 many opportunities to work on significant projects like
13 this in a working career. So I am looking forward to the
14 new job.

15 MEMBER RIE: Does the Board have to approve the
16 new Plan of Flood Control?

17 CHIEF ENGINEER BRADLEY: You do.

18 MEMBER RIE: You will be back.

19 CHIEF ENGINEER BRADLEY: I will be back.

20 PRESIDENT CARTER: As we stated yesterday, we wish
21 you all the best and we look forward to working with you
22 on the State Plan of Flood Control.

23 MEMBER BROWN: Mr. Chairman, I had the opportunity
24 and good sense, I guess, to hire Steve about 20 years ago.
25 I'm very proud to see his progression in the engineering

1 profession.

2 And thank you for your service.

3 CHIEF ENGINEER BRADLEY: Thank you very much.

4 PRESIDENT CARTER: Great. Mr. Punia?

5 CHIEF ENGINEER BRADLEY: We'll continue with
6 another information item.

7 As I mentioned to you in my last briefing, we had
8 finished the process for hiring our administrative
9 assistant, and we have offered the job to Geoff Shumway.
10 And we are doing the paperwork as soon as possible so that
11 we can start as soon as possible. Tentative date is
12 January 2nd, but it may or may not happen.

13 Lorraine, do you have an update on that, Lorraine?

14 MS. PENDLEBURY: No, I don't.

15 PRESIDENT CARTER: Just not soon enough.

16 STAFF ASSISTANT PENDLEBURY: You got it.

17 GENERAL MANAGER PUNIA: And then the next
18 information item is Memorandum of Understanding executed
19 with DWR. I think I want to commend the efforts of our
20 President Ben Carter and Butch Hodgkins who worked
21 aggressively on this, like more than a full-employee, and
22 spent several hours each day working with George Qualley,
23 David Gutierrez from DWR, Ward Tabor, and I think there
24 was a team effort to make it happen. I want to thank you,
25 George, and David Gutierrez and Ben and Butch on this.

1 MEMBER RIE: Good job, DWR.

2 GENERAL MANAGER PUNIA: And as part of the MOA
3 briefing, we will have an independent counsel starting
4 next meeting -- Virginia Cahill, a very capable attorney.
5 So she's working with the Attorney General's Office and
6 she will represent the Board starting the meeting in
7 January.

8 PRESIDENT CARTER: We do have Deborah Smith here
9 who works with Virginia in the Attorney General's Office
10 here in the audience today making notes and making sure
11 they are ready to hit the ground running, ready January 2.

12 GENERAL MANAGER PUNIA: I think it's a team
13 effort. Virginia and Deborah Smith will be helping us.

14 Next, California Vegetation Roundtable Meeting is
15 scheduled for January 4th. So we will be participating
16 with others to take it a step further. It's along this
17 vegetation on levee issues.

18 The 408 Task Force meeting is scheduled on
19 January 15th. We had our first meeting on December 4th,
20 2008. And the next one is scheduled for January 15th. We
21 had a good meeting. It was a good start, but we have
22 to -- it's a long way where we come up with a streamline
23 process to get the 408 approvals from the U.S. Army Corps
24 of Engineers.

25 And the goal of this task force is to come up with

1 some kind of a streamlined process where an applicant is
2 aware of the process, we are aware of the process, and
3 what it takes to get the 408 approvals from the U.S. Army
4 Corps of Engineers.

5 And the budget change proposal, we are continuing
6 working with the Department of Water Resources and
7 Department of Finance to put our budget change proposals
8 so that we can get additional resources to perform our
9 existing duties and the new responsibilities that came to
10 us with the flood legislation. So we are making progress
11 and we will continue refining and presenting our budget
12 change proposal.

13 And the other item is, after this meeting, I'm on
14 vacation. I'm going on a cruise to keep my family life
15 intact. I think it was very important. I'm thankful to
16 the Board that you are giving me the vacation for a week.

17 Thank you.

18 MEMBER BROWN: You are taking your cell phone with
19 you just in case?

20 GENERAL MANAGER PUNIA: I think my cell phone may
21 not work. I'm going to Cabo San Lucas which I think is
22 out of the reach.

23 MEMBER RIE: Jay, I was just on a cruise over
24 Thanksgiving. And I know your phone looks just like mine,
25 and it works in the middle of the ocean.

1 SECRETARY DOHERTY: You're going to call him just
2 for the heck of it, huh?

3 MEMBER RIE: I know it works. It rang.

4 GENERAL MANAGER PUNIA: Thank you. That was my
5 report.

6 PRESIDENT CARTER: Thank you, Mr. Punia.
7 Please go ahead.

8 MEMBER SUAREZ: In the interest, since we are
9 moving along this transition period, for my interest and
10 for those interested in the activities of the staff for
11 the next week, who would be our primary contact as we move
12 along issues?

13 GENERAL MANAGER PUNIA: Dan Fua will be our acting
14 general manager. I think that is my commitment with Dan,
15 even for his vacation that he has to stay here and I am
16 leaving.

17 PRESIDENT CARTER: So the appropriate delegations
18 of authority will be in place before you leave?

19 GENERAL MANAGER PUNIA: Yes.

20 PRESIDENT CARTER: Okay. Okay.

21 One of the things -- Mr. Punia, we've talked about
22 this briefly, and there have been requests from the Board
23 to reestablish our one-liners in weekly updates, and also
24 what the Board used to have, which was called a white
25 board, which is essentially kind of a running list of

1 tasks somewhat compartmentalized in terms of priority.
2 But just basically showing the backlog of what we're
3 doing.

4 Can we make a New Year's resolution that says that
5 we reinstitute them?

6 GENERAL MANAGER PUNIA: We will.

7 We were too busy and I think that we dropped it.
8 But Lorraine and I have talked about it, so we will
9 reinstate that.

10 PRESIDENT CARTER: I would be happy to work with
11 you on that as well as I'm sure Butch would.

12 So very good. Any other questions for Mr. Punia?

13 Okay. Very good. Let us take a -- about a
14 ten-minute recess, and we'll reconvene on Item 5.C shortly
15 after 1:15.

16 (Thereupon a break was taken in
17 proceedings.)

18 PRESIDENT CARTER: If I could ask you all to take
19 your seats, we'll go ahead and continue on with the
20 meeting.

21 Maybe we can stay ahead of schedule. We are on
22 Item 5.C at this point under applications. It's
23 Application No. 18227, Three Rivers Levee Improvement
24 Authority, Feather River Phase 4, Segment 2 -- Setback
25 Levee.

1 Mr. Bradley? Good morning again.

2 CHIEF ENGINEER BRADLEY: Good morning. Well, as
3 you know, there is no staff report, no staff
4 recommendation, and no permit before you for the reason we
5 talked about before. I am not going to argue against this
6 project. I think it is a good project. What I'm going to
7 tell you is that the process for staff to do their work
8 has been extremely disruptive. It is out of sequence. We
9 have a set of staff dates that where notifications are
10 sent out and so forth. In order to meet all these dates,
11 the staff worked for preparing submittals to the Board
12 which are due on certain dates. These dates were not met
13 on any way, shape, or form on this project. They really
14 were not met on the other two projects either.

15 Essentially, all the staff work and the staff
16 report is due at the date of the final agenda. That gives
17 the Board staff time to review all the staff reports, all
18 the submittals, and make sure that everything is ready to
19 go to the Board.

20 That was on November 30th. So the question you
21 should have is why is this even on this agenda at this
22 time? Because there was nothing at that time; there was
23 nothing ready at that time. Should have been all ready at
24 that time for staff to be reviewing it.

25 I have not reviewed either of the projects, either

1 Mr. Fua's LD1 project nor the Natomas project as chief
2 engineer. That is normally what is done. Projects all
3 come in around final agenda. I go through them, the
4 general manager goes through them, so that we're all okay
5 with everything that's being said and that it's being done
6 correctly. None of that has been done at this time
7 because of the short time frame of these projects.

8 Part of a permit -- 408 is somewhat different than
9 a permit. You are asking approval of the Corps to do
10 something. I'm not sure you have to understand each and
11 every detail in order to ask the Corps to approve the
12 project. You are saying, generally this is what we want
13 to do.

14 And I think we have talked about this up in
15 Marysville/Yuba City, where we had the meeting in October.
16 And I think that that's an appropriate action for the
17 Board to approve a 408 request of the Corps to consider
18 modifying that -- not considering altering a federal
19 project without all the nitty-gritty.

20 When you go to issue a permit, it's a very
21 specific item. You are giving permission to do very
22 specific things. It's not just a general, go out and
23 build the levee. It is to build the levee with certain
24 futures all the way along and with certain designs,
25 locations, and everything. And I think in this process

1 you're going to hear both the applicant and DWR saying
2 that this project is fine. And even the Corps gave a
3 qualified okay.

4 I'm not very happy with the way they have said
5 that because I don't think they did their job and I think
6 the Board ought to write them a letter to ask them
7 something.

8 But that all came in way after the time that the
9 staff report was being prepared, and it came at the time
10 all the stuff should be sent to the Board as final. What
11 I'm saying is that this is out of sync not because it's a
12 bad project or that the Corps wasn't doing their job.
13 It's just because the time frame is inaccurate for -- or
14 was now inaccurate but was not met for all the items to be
15 submitted to the Board, to the Board staff, and to the
16 Board to be looked at and approved along the way.

17 You heard Mr. Shapiro talk about the need for
18 these permits because of certain funding things. The
19 applicant has never come to the Board staff and told us
20 any of this.

21 And in my opinion, the Board has undercut Board
22 staff on this issue because the applicants have found out
23 they can go directly to Board members and that it is --
24 things are taken care of regardless of whether the Board
25 staff is informed or up to speed on everything that is

1 going on. And so the Board has undercut Board staff on
2 these issues by not referring them back -- when they get
3 questions, not referring them back to the Board staff to
4 work these issues out. They are being worked out here, in
5 public, and not behind the scenes.

6 I assume you think that I was not doing anything
7 for the several weeks that all this stuff was going on. I
8 would like to let you know that on Wednesday, we worked
9 out a substantial agreement with the City of West
10 Sacramento for the development along the Triangle,
11 something we've been working on for a long time. A lot of
12 it has been delayed because of TRLIA over the last several
13 months. We've had TRLIA on every agenda this year, I
14 suspect, without looking back. That has taken a huge toll
15 on all the other projects going on.

16 You know, I understand the need to move forward
17 with these projects. These are good projects. TRLIA,
18 SAFCA, LD1 -- these are the things that I think ought to
19 be done. We're setting back levees; that reduces your
20 maintenance. It's widening the floodway, gives the river
21 places to move, allows for the restoration of the riparian
22 system. SAFCA is building a huge buttress levee in their
23 project. That's what they are proposing. These are
24 things that need to be done.

25 There's only two kinds of levees -- those that

1 haven't failed and those that will fail. And what you
2 want to do is eliminate the catastrophic consequences of
3 the levee overtopping so if you can allow it to overtop --
4 not allow it to overtop, but if it overtops, you don't
5 want it to catastrophically fail. That's what happened in
6 New Orleans, and you saw the consequences of that;
7 everything will totally wipe out. That will happen in
8 Natomas; that will happen in RD 784 if the levees fail.
9 It will be total annihilation of the area, essentially, if
10 there's enough water to fill it.

11 So I think these are good projects. I think
12 there's certain issues as to why this didn't go on. Like
13 I said, we worked out a huge agreement with West
14 Sacramento, and even a way for the Board to kind of buy
15 into this without having a permit, because you can't hear
16 a permit until they do their EIR. Their EIR is probably a
17 year and a half down the way. But we worked out a way we
18 think we can do that through transfer of easements to the
19 Board for the flood project. We will have to look at
20 that. There's only one or two small issues that need to
21 be resolved or to be determined if there's some
22 requirements. There's a huge step forward. Mr. Shapiro
23 was in that meeting. And it's a huge step forward for
24 this Board, and it should make this project go smoothly in
25 the future.

1 The large issue that I was dealing with is that
2 back about the time that this Board was appointed, we were
3 dealing with the Sacramento Regional Sewer. They drilled
4 two large tunnels under the Sac River, 15 feet in
5 diameter, for sewer pipes that go under the river for the
6 regional sewer system. The northern one is up near the
7 I-80 crossing in the Natomas Basin. When they did that
8 one, the tunnel boring machine broke down and there was a
9 house there that they were using for a project office.
10 That was over the top of a sink hole that was about
11 20 feet in diameter, 5 feet deep, and about 10 foot in
12 diameter, a huge sink hole. House has been removed. It
13 was -- it was already owned by Sacramento County Parks, I
14 believe, so they owned the land. But there was also some
15 settlement of the levee.

16 So part of the things we've been working on is
17 what analysis Sac Regional Sewer should provide the Board,
18 SAFCA, and RD 1000, along with the City of Sacramento, to
19 be sure that the levee is not going to sink and fail this
20 winter.

21 So a lot of that was worked out. I issued the
22 letter after the Corps comments, received a lot of Corps
23 comments. I sent that letter off on the 19th, I believe.
24 So they are out there, I believe, doing the data
25 collection as we process them.

1 I've been waiting for one applicant to get me
2 information at the last minute. I'm not just sitting
3 around waiting. So there are things going on besides
4 this.

5 As I said, I requested information. I sent a
6 letter to TRLIA on -- an e-mail. I sent an e-mail to
7 TRLIA on -- to the TRLIA project manager on November 21st.
8 And I said I need these certain things from them by
9 December 5th. One of those was an approved Corps letter.
10 The other was final design drawings for the tie-in of the
11 slurry walls and to the existing levee.

12 We did get drawings of the slurry walls. We did
13 not get the Corps letter until the 11th of December, and
14 that went to project staff. That was given to me, or
15 forwarded to me, on the 13th, because project staff was
16 out of the office at that time. I actually got an
17 official signed copy e-mailed to me from the Corps on the
18 18th of December.

19 I also sent a letter to DWR on
20 November 29th asking for their comments on LD1, the
21 Natomas project, and TRLIA, and also asking for those by
22 December 5th.

23 I received those. They came in on
24 December 10th about 5:30 or something. I saw them the
25 next day, essentially, December 11th. This is a week

1 after everything was really due to me, and at the time
2 that everything was essentially being made out to the
3 Board.

4 MEMBER SUAREZ: May I ask you a quick question --

5 CHIEF ENGINEER BRADLEY: Yes.

6 MEMBER SUAREZ: -- that you said you did receive
7 comments from DWR.

8 CHIEF ENGINEER BRADLEY: I did.

9 MEMBER SUAREZ: And approximately how thick was
10 the document? The comments? How many pages?

11 CHIEF ENGINEER BRADLEY: One. They are
12 essentially supporting the project. And I think you will
13 hear them speak today.

14 MEMBER SUAREZ: So the DWR comment that you were
15 waiting for, that were given to you, was a one-page
16 document?

17 CHIEF ENGINEER BRADLEY: Right. There are still
18 negotiations going on, on the project. There was a
19 meeting on the 19th that I -- yeah, the first that Jay and
20 I were both invited to, I declined. The invitation came
21 out about, was it, 12/5. But we had already scheduled a
22 meeting with West Sacramento. And so I declined at that
23 time. They did not change that meeting. That meeting did
24 go on, on Wednesday. And that was to resolve some of the
25 final design comments, so this thing is not quite done

1 yet. It is very close. I cannot tell you exactly what
2 the project is. I know 90 percent, maybe, of what it is.
3 We're somewhere in the 80, 80 percent design stage
4 overall, maybe. Maybe 90. But we haven't seen all the
5 final stuff yet. It hasn't been submitted to us. I think
6 that we're in -- but that's all happened in the last ten
7 days.

8 MEMBER SUAREZ: Just to back up, what final stuff
9 have you not received?

10 CHIEF ENGINEER BRADLEY: I will need to touch base
11 with the staff because most of them are looking at it.
12 But we did receive -- we haven't received any revised
13 drawings.

14 I think the alignment that we had originally is
15 what's going to be proposed. As far as I know, I believe
16 that's what's going to be proposed eventually. We have
17 not seen those final drawings for that. We don't have
18 like -- I wouldn't say we have 90 percent drawings of that
19 level.

20 TRLIA may be able to address that if you have that
21 question. I have a truckload of stuff from TRLIA if
22 anybody would like to have it. I'm going to be cleaning
23 out my office soon. So it's a huge amount of information
24 to go through.

25 MEMBER SUAREZ: And I appreciate your transition

1 and you've been busy transitioning into your new job and
2 all those things.

3 But I just wanted to make sure that I understand.
4 You asked for a Corps -- the Corps letter which you got
5 but you are not satisfied with. But we'll be hearing from
6 the Corps today, so hopefully we'll be able to get the
7 needed documentation that's satisfactory that we need to
8 make a decision. You had some design issues, and you have
9 or have not received that information?

10 CHIEF ENGINEER BRADLEY: We have not received all
11 the information.

12 MEMBER SUAREZ: And what information is missing,
13 when you say, "We have not received it all"?

14 CHIEF ENGINEER BRADLEY: I have not seen all the
15 final design on the tie-ins. I'm not sure about the final
16 alignment. I talked about this, you know, in October.
17 There was several issues.

18 MEMBER SUAREZ: Is there somebody in your staff or
19 in our staff that has received any of that information?

20 CHIEF ENGINEER BRADLEY: No. Because we were
21 waiting for DWR to say that that was the final alignment.
22 I think they are going to say that that's the final
23 alignment.

24 MEMBER SUAREZ: And you are prepared to -- if they
25 say, "This is the final alignment," are you prepared to

1 give us your opinion on that?

2 CHIEF ENGINEER BRADLEY: No, I am not. I have not
3 looked at the final stuff yet. I'm not going to give you
4 a final opinion today.

5 MEMBER SUAREZ: Is there anybody on your staff who
6 would be prepared to give final opinion regarding the
7 final alignment?

8 GENERAL MANAGER PUNIA: You are asking today or
9 next meeting?

10 MEMBER SUAREZ: Today.

11 GENERAL MANAGER PUNIA: I think it's very
12 difficult to give an opinion that shows the final
13 alignment.

14 MEMBER SUAREZ: My guess is that you have seen
15 some of these things before.

16 CHIEF ENGINEER BRADLEY: We have not seen what the
17 final design is. It may be the same, it may not be. DWR
18 and TRLIA have been working this out along with the Corps.

19 We have not received -- I talked with the staff
20 who will be writing -- the person who will be writing the
21 permit. He said he has not coordinated some of the
22 geotechnical issues with the Corps. We are close; we are
23 just not quite there yet. That's what I've been saying.

24 MEMBER SUAREZ: It sounds to me, there is a chance
25 that we might be close enough for some of these things to

1 be presented and discussed today.

2 CHIEF ENGINEER BRADLEY: Well, that is your
3 decision, not mine.

4 MEMBER SUAREZ: I understand. I just wanted to
5 get to a point where at least I'm getting some opinion.

6 CHIEF ENGINEER BRADLEY: You won't get an opinion
7 from me today.

8 MEMBER RIE: Is there anybody from DWR that can
9 talk about the alignment here today? Not right now, but
10 later?

11 CHIEF ENGINEER BRADLEY: The Corps letter, why do
12 I not like the Corps letter.

13 Under -- your permits are reviewed under federal
14 regulation 20810. That is what we coordinate with the
15 Corps on. Under section 1A of that -- A5, it basically
16 said -- well, it says, "No improvements shall be passed
17 over, under, or through the walls, levees, improve
18 channels or floodways, nor shall any excavation or
19 construction be permitted within the limits of the project
20 right-of-way, nor shall any change be made in any feature
21 of the works without prior determination by the district
22 engineer of the Department of the Army or his authorized
23 representative that any such improvement, excavation,
24 construction, or alteration will not adversely affect the
25 functioning of the flood protection facilities."

1 That's the important part. There's some more down
2 below there. But basically, the district engineer has to
3 make a determination as to whether the proposed works or
4 the proposed project will adversely affect the functioning
5 of the flood protection facility.

6 So the Corps has kind of punted that by saying
7 that the permit is subject to headquarters, U.S. Army
8 Corps of Engineers, issuing a section 408 approval. "No
9 construction shall be allowed until section 408 approval
10 is obtained. If headquarters disproves section 408
11 requests, the Reclamation Board shall notify the applicant
12 that the conditional permit is no longer valid."

13 What they have not done is find under 20810 that
14 that is not. They are saying that that's going to be done
15 under 408, and that this is okay because that finding will
16 be done under 408. The problem is, we need it under
17 20810; that's the permitting process. These are two
18 separate -- 20810 is a federal regulation. 408 is the
19 law. But 20810 does not fall under 408.

20 If I was going to be here in the future, I would
21 send a letter to the Corps stating that this is not
22 adequate approval under 20810, that they have punted it to
23 408. That if they want to make it under there, they
24 should say that, "We cannot make that finding under 208,
25 and it will be made 408." But what they have said is

1 essentially it's conditional approval. They have no
2 objection to doing this, but that the real approval is
3 coming under 408.

4 And I have a problem with that, is that 208, and I
5 do not believe they complied with it. But that is federal
6 law. But it is not adequate from my point of view, as
7 chief engineer of the Board at this time, that they met
8 what I need from them stating that this is an okay
9 project.

10 On our project design, the Board's regulations
11 state under 8.B.3, "Complete plans and specifications
12 showing the proposed work including location map" and so
13 forth. We don't have complete plans of specifications.
14 We've talked about this before. Can you do it at
15 60 percent? Sometimes, if it's a very straightforward
16 project and there aren't any issues of where the project
17 is going to be done and all you are waiting for is the
18 final design. I think you can. I think that's a judgment
19 call.

20 We may be there with this project. We weren't
21 there at the time the staff report was due. We were not.

22 MEMBER RIE: I have a question. Don't we have a
23 standard permit condition that prior to starting
24 construction, they must submit the plans and
25 specifications?

1 CHIEF ENGINEER BRADLEY: We use that if we've
2 written them with less than a hundred percent just to make
3 sure that they don't make any changes.

4 MEMBER RIE: Okay.

5 CHIEF ENGINEER BRADLEY: Even with that, they make
6 changes that we don't know about.

7 MEMBER RIE: But everybody does that; right?

8 CHIEF ENGINEER BRADLEY: That happens a lot.

9 But sometimes there's a problem. As part of the
10 permit approval process -- and I'm not sure how it applies
11 to 408, whether you need CEQA findings of 408 or not. But
12 with the permit approval, you do have to make CEQA
13 findings. You have to say that CEQA has been complied
14 with when you issue the permit. I have some concerns with
15 adopting the locals or the applicants for CEQA. And I'm
16 not sure those have been answered to my satisfaction yet.

17 I believe the project is being looked at as an
18 individual project and not on the impacts of the system as
19 a whole. And I believe this Board is charged with not
20 moving projects forward. You are charged with assessing
21 the impact of projects on the existing flood control
22 system, to make sure that nobody suffers from somebody
23 else's project.

24 Also -- and one of the reasons I made concerns,
25 there were two prior documents produced. They actually

1 are from the Sacramento area. But in there, they
2 reference the Yuba Basin project, which is what you have
3 based your 104 request on. One is the 1991 feasibility
4 report for the American River Watershed investigation; and
5 the second is the supplemental information report from
6 1996 on the American Watershed Project.

7 And in there, they specifically reference the Yuba
8 Basin investigation, talking about a reconnaissance study
9 was completed March of 1990. "The proposed alternatives
10 investigated the reconnaissance level study, levee raising
11 along the Feather and Yuba Rivers to provide at least
12 150-year level of flood production was found to be
13 feasible. Detailed feasibility level studies were
14 initiated in September of '91. A draft feasibility report
15 and EIS are expected to be completed in late '93. Levee
16 grading, if authorized, would take place primarily on the
17 landward side of the levees affecting primarily
18 agricultural and grassland habitat. Detailed
19 environmental analysis and mitigation studies will be
20 conducted by the EIS.

21 "These enhancements would provide the Yuba River
22 study area with protection in excess of the current design
23 of the system. As a result, flood waters which might
24 otherwise cause levee failure and extensive flooding in
25 the study area will be contained within the system and

1 conveyed downstream. To the extent that these downstream
2 flows would compromise the integrity of the existing
3 system below the study area, these adverse hydraulic
4 impacts would have to be addressed to determine if
5 mitigation would be required as part of the project."

6 I do not believe that that has been done. And
7 there's a similar statement in the 1996 supplemental
8 report.

9 So if you are going to make findings, these -- by
10 the way, these reports are combined state, federal
11 documents between the Corps of Engineers and the
12 Reclamation Board. So these are Reclamation
13 Board-approved documents.

14 I'm going to touch a little bit on 408. We've
15 talked about the staffing. 408 has kind of thrown the
16 staff into -- kind of throwing us for a loop. These are
17 very large projects.

18 In the past, there has been some members of the
19 Board that didn't agree with the 408 process. I've always
20 looked at it as a step forward. Prior to 408 being --
21 coming -- the Corps saying the 408 could be used to
22 approve projects, projects were done. Very small projects
23 were done through a permit. Very large projects had to go
24 to -- for congressional authorization. A ten-year
25 process, 20-year process. All depends on having the local

1 sponsor, a nonfederal sponsor, and federal government, all
2 having money and all being willing to proceed forward with
3 the project.

4 So 408 has allowed us to go from a 10- or 20-year
5 time frame to something much less. Whether it is on the
6 speed of a normal application of a few months remains to
7 be seen. There are large issues to be looked at. The
8 design of significant projects and changes to the system
9 have to be assessed, and looking at the environmental
10 consequences.

11 So you heard earlier this morning, in the general
12 manager's report, that you are working with the Corps to
13 develop some process for what needs to be submitted. I
14 think this Board should consider on its own how internally
15 we're going to handle 408, not what we're going to submit
16 to the Corps. They are going to tell us what we want, but
17 how are we going to handle 408?

18 When we make a 408 request, are we going to
19 issue -- do you want to issue a permit at the same time?
20 We're not sure that you should do that. You could do
21 that. We've done that. But in essence, you're issuing a
22 permit for a project that has no federal approval to do.
23 You don't know what the changes are going to be or even if
24 it's going to be approved by the Corps.

25 My recommendation, and you can just take this from

1 my experience with this, is that you should ask for the
2 408. When the 408 comes back and approves that change,
3 you issue -- then you issue the permit. You have the time
4 that the Corps is working on it to work out all the issues
5 that go along with that. You should have some sense of
6 whether the Corps is concerned with anything or not.
7 Certainly, within the Corps there seems to be some
8 disagreement as to how the system should be looked at,
9 whether these should be looked at as project by project or
10 in a comprehensive manner.

11 I think there's some concern that you are making
12 changes to the Feather River on the left bank, Feather
13 River on the right bank, the Natomas cross-canal, and you
14 are looking at changes downstream on Sacramento. There's
15 four significant changes to the system in one fairly small
16 highly populated area in the downstream area. And so how
17 do all these interact? That has not been thoroughly
18 looked at.

19 And so I think these are concerns. These are
20 concerns I've had for a long time. I've talked with the
21 applicants on some of these. Joe Countryman and I have
22 sat in a room and argued for hours over some of these
23 things, you know, as to how much it is. Whether you have
24 to have an entire new plan of flood control to move
25 forward, I'm not sure. But I do think that these could

1 have all been assessed together. I mean, it's essentially
2 the same model for all of these projects being run by the
3 same consultants. So I think it could have been combined.
4 I don't know how difficult that would be. But there
5 certainly is the potential that they could have all been
6 looked at in whole rather than individually.

7 Anyway, I think, I've laid out my concerns. I do
8 not have a recommendation for you today. I did not have a
9 recommendation on Mr. Fua's, essentially, although I think
10 the 408 is to accept the levee setback and I think it
11 looks good. 408 is probably an appropriate address. You
12 are going to hear SAFCA -- I believe the staff
13 recommendation, as I understand it -- I've not read the
14 staff report -- is that you approve the 408 and not the
15 permit this time.

16 MEMBER SUAREZ: We're not talking about SAFCA, are
17 we?

18 CHIEF ENGINEER BRADLEY: I'm saying -- we are not.
19 I'm saying that all these projects are coming forward and
20 you are dealing with the same issues. You have three
21 projects that are essentially at the same level, where you
22 are going to be asking for 408 and issuing permits. They
23 are just at different places where you are actually
24 issuing the permit.

25 TRLIA is not much different than SAFCA's project,

1 where the recommendation by the engineer on that one would
2 not issue the permit. You weren't asked to issue a permit
3 on LD1. These are all similar projects being looked at,
4 completely differently by the Board.

5 PRESIDENT CARTER: Any questions for Mr. Bradley?

6 SECRETARY DOHERTY: Yes. Mr. Bradley, as I
7 understand it, and you just reiterated, and then you just
8 said something different. A 408 is merely a request for a
9 review. It is not a permit. Now is that correct?

10 CHIEF ENGINEER BRADLEY: It is not a permit. It
11 is a request by the nonfederal partner -- that is the
12 Reclamation Board on almost all of the Central Valley
13 projects -- to be able to alter the federal flood control
14 system, so in seeking the Corps' approval to make that
15 alteration. It's not a review. The review is part of the
16 process. But you get a letter saying, yes, you can
17 proceed forward with your project.

18 SECRETARY DOHERTY: But that's not a permit. So
19 how can you proceed with it if we don't say, "Okay, now
20 we've got the 408 letter approving the fact that you can
21 hook onto this levee," and we haven't said, "Okay. Go
22 ahead."

23 CHIEF ENGINEER BRADLEY: Right. They cannot --
24 that approval comes to the Board, not the applicant. So
25 you have been told, when you receive the 408 letter,

1 you've been told, yes. What you are sending to the Corps
2 and you are saying, "We think this is a good project and
3 the Corps should consider altering the federal project to
4 set back this levee because you receive hydraulic benefits
5 from that." Okay?

6 You're explaining that it's a good project to the
7 Corps, and you are submitting all the information they
8 request to make that determination at their level.

9 They come back to say, "We agree. You may alter
10 the project." At that time since the applicant has
11 actually applied to do that, then you can consider whether
12 you are going to give them the permit, altered. You do
13 not have to.

14 SECRETARY DOHERTY: That's what I'm trying to get
15 at. So 408 is one thing and then the permit is another.

16 CHIEF ENGINEER BRADLEY: They are completely
17 separate.

18 SECRETARY DOHERTY: All right.

19 CHIEF ENGINEER BRADLEY: And that's the reason I
20 think, you are not actually taking an action and why CEQA
21 is probably not required. And I don't know. I'm not a
22 CEQA expert. I'm not an attorney. But why CEQA is
23 probably not required for 408, requesting 408 approval.
24 But under issuing a permit, you do have to comply with
25 CEQA. That is in the regulation and required by state

1 law.

2 SECRETARY DOHERTY: Well, your caution is well-
3 accepted, and your words are well-accepted.

4 Thank you.

5 PRESIDENT CARTER: Any other questions for Mr.
6 Bradley?

7 VICE PRESIDENT HODGKINS: If I could, Steve.
8 Would you go back again and talk about what those previous
9 documents say about hydraulic impacts?

10 CHIEF ENGINEER BRADLEY: Do you want me to read
11 both of them again? Essentially --

12 VICE PRESIDENT HODGKINS: I'm not sure that you
13 need to do that. I probably would like to look at those
14 for my own information.

15 But what documents are they?

16 CHIEF ENGINEER BRADLEY: One is the American River
17 Watershed Investigation California Feasibility Report,
18 December 1991. It's a joint document by the U.S. Army
19 Corps of Engineers and the Reclamation Board, State of
20 California. The other document is the American River
21 Watershed Project, California, Supplemental Information
22 Report, March 1996.

23 And essentially what they are saying is that
24 because the Yuba Basin Project upstream, the goal of that
25 is to increase the flows in the Yuba and Feather Rivers

1 and that you need to assess the impacts of those flows on
2 the downstream entities. But that has to be assessed.

3 And what it says, "These enhancements would
4 provide the Yuba River study area with protection in
5 excess of the current design of the system. As a result,
6 flood waters which might otherwise cause levee failure and
7 extensive flooding in the study area will be contained
8 within the system conveyed downstream. To the extent that
9 these downstream flows would compromise the integrity of
10 the existing system below the study area, these adverse
11 hydraulic impacts would have to be addressed to determine
12 if mitigation would be required as part of the project."

13 So I think you have to assess what happens when
14 you increase the flows in part of the system on other
15 parts of the system. And the Board is really responsible
16 for looking at all of that.

17 Under 408, you may choose to want to be, instead
18 of being the responsible agency under CEQA, to be the lead
19 agency for these projects that actually modify the project
20 system.

21 The local agency could still do all the work, but
22 you would have to look at it as an impact on the system.
23 And you would be the lead agency directing that work.

24 Butch, because it is your system, you are
25 responsible for the operation and maintenance of that

1 system as turned over by the Corps of Engineers.

2 VICE PRESIDENT HODGKINS: Thank you.

3 PRESIDENT CARTER: Any other questions for Mr.
4 Bradley?

5 Mr. Butler, go ahead.

6 SENIOR ENGINEER BUTLER: Steve, can you just
7 clarify the increased conveyance capacity of the Feather
8 River system? You said earlier it would be increased in
9 the design from the '57 profile to 150,000 cubic feet per
10 second, water surface elevation; is that correct?

11 CHIEF ENGINEER BRADLEY: That would be -- yes.
12 That would be in the Yuba River. The current design is
13 120. The proposal at that time was 150,000, or 150-year
14 protection. Now 1 to 200.

15 SENIOR ENGINEER BUTLER: Yeah, I misspoke. It's
16 150 years.

17 CHIEF ENGINEER BRADLEY: Yeah. 150 year -- going
18 to 150-year level. It is now 200.

19 And like I said, your 104 request on this project
20 is based on the Yuba Basin project. And that is the
21 reason Yuba County Water Agency was the entity that
22 requested you make the 104 request.

23 PRESIDENT CARTER: Thank you.

24 MEMBER RIE: I have a quick question.

25 You raised the issue of lead agency versus the

1 responsible agency. And currently, at this time, if I'm
2 not mistaken, we're still the responsible agency.

3 CHIEF ENGINEER BRADLEY: We are the responsible
4 agency. But what I'm saying is that as part of the 408
5 process when you -- if you ever decide to establish how
6 the Board should handle this, and Board staff, you may
7 want to consider saying, when there's a modification to
8 the flood control system, we want to be the lead CEQA
9 agency.

10 MEMBER RIE: So that's something that we could
11 consider in the future?

12 CHIEF ENGINEER BRADLEY: Yes.

13 MEMBER RIE: But at this time for this
14 application, we're the responsible agency?

15 CHIEF ENGINEER BRADLEY: You are the responsible
16 agency.

17 The question is whether you are happy with that.
18 I don't know if you have to -- I don't know if CEQA law
19 says that you have to accept that or not. But that's the
20 way it stands at the moment. You are a responsible
21 agency. The lead agency for this is TRLIA.

22 MEMBER RIE: Are you okay with us being the
23 responsible agency?

24 CHIEF ENGINEER BRADLEY: I think that they are
25 looking at it from a project-by-project view. And your

1 responsibility is to look at it as it impacts the system.

2 MEMBER RIE: Are you recommending that we become
3 the lead agency or remain the responsible agency?

4 CHIEF ENGINEER BRADLEY: I'm saying the Board at
5 one time or another should consider whether that's
6 appropriate or not. That's not -- that is not my
7 expertise. I am not an environmentalist. I am an
8 engineer. So that is something the Board themselves as a
9 Board has to feel comfortable with. I'm saying that there
10 are issues here, whether you look at things project by
11 project or as a system, for which you are charged with.

12 MEMBER RIE: Okay. Thanks.

13 PRESIDENT CARTER: Mr. Punia?

14 GENERAL MANAGER PUNIA: Good afternoon. Jay
15 Punia, general manager.

16 Just like some of the Board members, most of the
17 staff wants to move this project as soon as possible so
18 that the construction can start on Segment 2. But I will
19 request the Board to refrain itself from approving the
20 project without the staff report and the CEQA findings
21 today. It will send a bad example and it will not serve
22 the Board well in the future.

23 I can assure you that as the staff, we'll do
24 everything possible so that we can bring back this project
25 with the staff report and with appropriate recommendation

1 for your consideration.

2 There are only 28 days before the next Board
3 meeting. There's pretty good likelihood that we may be
4 able to bring this project back to you during the January
5 Board meeting. So I will urge you not to approve the
6 project without the appropriate staff report and
7 recommendation.

8 And I agree with Steve that the appropriate
9 procedure should be that we get the Corps approval 408 and
10 then we should issue the permit. But we are willing to
11 work with TRLIA. We understand the constraints they are
12 working under to put their finance plans in place. So I
13 think it's okay to have exceptions where we issue the
14 permit before getting Corps 408 approval.

15 But again, I urge you that, in my mind, there's no
16 need for you to have a briefing from the applicant without
17 the staff briefing. We will bring it back and you will be
18 able to hear from the staff and from the applicant.

19 Thank you.

20 MEMBER BROWN: Who specifically in staff will you
21 designate to review this, Jay?

22 GENERAL MANAGER PUNIA: It will be between our
23 staff, between Dan, Eric, and myself. We will do the best
24 we can to bring it back to the Board, possibly the next
25 meeting. If not possible, then the following meeting.

1 MEMBER BROWN: Thank you.

2 MEMBER RIE: Are you willing to cancel your
3 vacation?

4 You don't have to answer that.

5 PRESIDENT CARTER: Any other questions from
6 Mr. Punia?

7 MEMBER BURROUGHS: I have a comment. Thank you
8 very much for your words. And I -- my comment is to
9 everyone. We have to be a more effective team. Our
10 communication has to increase with our applicants and our
11 staff and our Board.

12 I have been very upset about -- as a Board member,
13 not having information in a timely manner for me
14 personally to be able to review it to make a judgment or a
15 decision on information as it comes through.

16 This isn't said to any one applicant, but I would
17 like to have us work as a team. And if a date has been
18 set that information needs to be presented by the
19 applicants to our staff, that that is enforced. And then
20 we can all work together, giving respect to our staff for
21 the time that it's required of them to review these very,
22 very important, big projects.

23 And so I thank you. And I hope that we can
24 continue to work in cooperation in a very positive way as
25 a team.

1 PRESIDENT CARTER: Thank you.

2 VICE PRESIDENT HODGKINS: I have a question.

3 Jay, help us understand the bad precedent a little
4 more clearly. I mean, Steve said -- and I think I agree
5 with it. How allowing an applicant or working with
6 applicants and by the Board's members involved in the
7 project, we undercut the staff. And I guess I want to
8 hear you say why you think it's a bad precedent.

9 GENERAL MANAGER PUNIA: My statement is that to
10 make a decision without hearing the staff report and staff
11 recommendation, you are just listening to the one side and
12 then making a decision. You don't have the opportunity to
13 listen to the staff work and what the staff position is.
14 And you are making the decision based upon the applicant's
15 point of view only.

16 I think that's our job as a staff to you, to
17 provide the best information so that when you are making
18 the decision, you have that information from the applicant
19 and the staff, and then you are making the decision.
20 That's the rule -- I consider the staff -- that we owe you
21 a recommendation and the facts so that you can make the
22 best decision possible. And we are missing that component
23 today.

24 PRESIDENT CARTER: Any questions for Mr. Punia?
25 Other questions?

1 MEMBER BROWN: I don't know if it's a question or
2 not, but it's a concern. When we have these conflicts
3 which arise that we're not able to meet a timely schedule
4 on our behalf or on behalf of the clients, there's always
5 a cost somewhere. If we don't proceed with the project in
6 a timely basis, there certainly is a cost. And if we
7 proceed without the full analysis of our staff to be able
8 to evaluate that project, that is also a cost.

9 And I think that's where the Board comes in is to
10 evaluate those differences and value. I've been able to
11 identify those times when these conflicts and shortage of
12 time arise and try to make a decision based upon what is
13 the most advantageous situation.

14 GENERAL MANAGER PUNIA: I agree and respect that
15 statement.

16 MEMBER BROWN: That gives us some slack, the
17 Board, to not always agree with staff because that value
18 has to be made by the Board. The staff has an obligation
19 to present the technical analysis and such to their best
20 ability. And we respect that. But then we also have the
21 other side of the issue, whether to proceed or not, with
22 or without that information, depending upon the costs.

23 Say, for instance, in this case, if there was some
24 possibility that the client and/or the project might lose
25 a lot of money because of untimely delay, I think that's

1 where our considerations come in.

2 And I think we need to work that way.

3 VICE PRESIDENT HODGKINS: And, you know, I think
4 in this case the cost to the client, which is potentially
5 of safety is the flood risk associated with not moving
6 forward.

7 And here's what I would like to discuss a little
8 bit further. I mean, Steve did a pretty good job of going
9 through and describing the information that he had not
10 received. And it's the Corps letter, which eventually
11 came through, but still isn't what Steve thinks it should
12 be. And we have the Corps here, and the Board can listen
13 on both of those as to what we think we need from the
14 Corps.

15 We are short some of the drawings necessary to
16 constitute a complete set of plans. It sounds to me like
17 that's absolutely true. And so we could not grant a
18 permit until staff, working, I hope, with DWR, is prepared
19 to say, we now have a complete set of drawings, and we
20 have the ability to issue a permit. But those, in my
21 opinion, are technical issues that really are not policy
22 issues. And we rely on staff to do that work for us.

23 And if those changes resulted in some policy
24 implication, then the whole thing has to come back to the
25 Board. So we could address that in a manner that would

1 say, we don't get a permit until staff has reviewed,
2 working with the Department of Water Resources, complete
3 plans.

4 Steve raised questions about the hydraulic impacts
5 in the system as a whole. This is a very challenging
6 subject. And for me, at least, I'm prepared to listen to
7 the applicant and to staff's response to what the
8 applicant has to say -- and we've seen most of the
9 information before -- and make a decision, based on my
10 judgment, as to whether or not I think the analysis is
11 adequate. So that's kind of where I am here.

12 And what I would like you to do, if you can, for
13 me, is to tell us what it is that we don't have that could
14 be presented today that would better enable the Board to
15 be able to make a decision on this project.

16 GENERAL MANAGER PUNIA: You don't have the CEQA
17 findings prepared by the staff. And as Steve indicated,
18 you don't have a staff recommendation. You are making
19 your own recommendation based upon the information
20 provided to you. So those are the things missing for you
21 to make a decision.

22 And I want to make another statement. TRLIA
23 cannot go to construction until the 408 permit is granted
24 by the U.S. Army Corps of Engineers, which is going to be
25 earliest possible, March or April. So from staff's

1 perspective, issuing a permit is not on a critical path.
2 Getting 408 permit is on the critical path. But there's a
3 caveat that we understand there are other implications for
4 aligning the funding. So we are trying to accommodate the
5 request, but the critical path is the 408 permit and we
6 expedited the approval process and we sent the letter to
7 the U.S. Army Corps of Engineers. And we are willing to
8 work with them, but I think the staff is being pushed too
9 far, and that's why Steve and I agree with staff's
10 recommendation, that it should be -- that staff be given
11 more time so we can prepare the report and recommend to
12 you -- come up with a recommendation hopefully next month.

13 Thank you.

14 MEMBER SUAREZ: Mr. President, if I may.

15 PRESIDENT CARTER: Yes, go ahead.

16 MEMBER SUAREZ: Mr. Punia, I agree with you
17 completely, that it's a very unfortunate circumstance we
18 find ourselves in and it's very uncomfortable and
19 distressing for us to be sitting here, having to think
20 through very difficult issues that, as Mr. Hodgkins says,
21 affect potentially lots of people -- not just things, but
22 the lives of people. And that's right. It's an
23 unfortunate first, I think, we find ourselves in.

24 But there are many other firsts in this situation.
25 We have a public that has agreed through votes to

1 authorize suspending of billions of dollars to upgrade a
2 system that we all agree needs upgrading, and this project
3 is an integral part of that. We have voters that have
4 expectations that we're going to be spending those dollars
5 and we're going to be doing it sooner than later. And
6 that's a first.

7 And we also have the first that we are facing in
8 January of 2008 a new world for this Board authorized by
9 the legislature, signed and approved by the governor, that
10 institutes procedures that we ourselves are not sure we're
11 going to follow. And it's going to take us not a month or
12 two or three. It's going to take us probably four or five
13 months to figure that out, and a battery of attorneys to
14 sort through that. And it is that first, I think, in my
15 mind, that has a tremendous amount of consequence today.

16 I agree, I don't feel comfortable -- and we have
17 talked about this in the past about going through our
18 process where we're still waiting for the Corps to give us
19 the final 408. I agree with you.

20 And for applicants out there, in the future,
21 understand that just because we might be willing to move
22 in this situation with some kind of conditional permit,
23 even though we're awarding 408, that's not going to be
24 necessarily the way the board will always act in the
25 future.

1 But today, facing the 2008 new world, facing the
2 reality that taxpayers are expecting us to start spending
3 this money, in my mind, as Mr. Brown was suggesting, those
4 things weigh heavily as I try to balance the situation and
5 come to a decision.

6 So I would urge you as much as possible, not to --
7 to as much extent as practical not go into stubborn,
8 "We're not going to give you a recommendation." I agree
9 with -- you have already give us a lot of information.
10 You have already given us a lot of questions that need to
11 be answered for us. And I'd really hope that as we are
12 engaged in this discussion for the next 45 minutes or
13 whatever, you really participate. We really need you to
14 participate.

15 Thank you.

16 MEMBER RIE: Mr. President, I would like to
17 request that we move on with the presentations. I think
18 it's really critical that we hear from the Corps and we
19 need to hear from DWR. This is a once in a lifetime
20 opportunity with the 1E bond funds. This project is
21 approaching \$200 million. It's a once in a lifetime
22 opportunity to actually have that kind of money. So I
23 feel we need to move forward. We need to hear from DWR.
24 We need to hear about the funding constraints, and we need
25 to hear about that today.

1 Okay. Any other comments?

2 GENERAL MANAGER PUNIA: Thank you.

3 PRESIDENT CARTER: I would like to -- I agree with
4 several of the other Board members in terms of, this is a
5 very unfortunate situation. It feels like right now it's
6 a lose-lose situation because the Board is faced with the
7 choice of making a decision to move forward without a
8 staff report, without the benefit of essentially
9 independent review of the applicant's information, or a
10 choice of not moving forward and potentially putting
11 people at risk for flooding or for others. It's not a
12 good situation for the Board.

13 I'm sorry we're here. I'm hoping that in the
14 discussion that ensues, that we can turn this from a
15 lose-lose into a win situation here. And I hope that we
16 hear some good evidence to turn that around.

17 I also want to ask the applicants from here
18 forward to be aware of the limitations of our staff and
19 their capacity to process information. It is not
20 acceptable for you to be submitting information at the
21 11th hour that you have been working on for months and
22 months and expect them to turn it around in days. We do
23 not have enough staff to do that. Maybe someday we will,
24 but we do not today. And it is inappropriate for you to
25 expect that of our staff. And it's inappropriate for the

1 Board to expect that of our staff.

2 So we have to work with the resources we've got
3 and the limitations that those resources face us. But it
4 is unfortunate that those limitations have put us in this
5 kind of a situation today. Very unfortunate.

6 It is 12:20 now. We can take a break here for
7 lunch. Maybe we can take a short break. I would propose
8 instead of an hour, we try and limit lunch to 40 minutes,
9 reconvene here at 1:00 o'clock.

10 I would encourage the applicant -- you will be
11 addressing the Board -- you make your presentation
12 concise. I don't think we have enough time in the
13 afternoon to go through all of this given what we have
14 after this item. So you need to give us the kernels of
15 what you have got. And focus on the gaps that we have
16 today, which I understand are the Corps letter, the
17 finality of the drawings and designs that we're lacking,
18 the CEQA findings, the systemwide hydraulic impact. So
19 those are the major gaps that I heard about today.

20 So with that, we'll adjourn till 1:00 o'clock
21 where we will hear from the applicant and the public and
22 the other agencies.

23 (Thereupon a break was taken in
24 proceedings.)

25 PRESIDENT CARTER: Good afternoon, ladies and

1 gentlemen. Welcome back to the State Reclamation Board
2 meeting.

3 We'll go ahead and continue with our agendas. As
4 you will recall, we were discussing Item 5C, Application
5 No. 18227. The staff has given its report. The Board
6 made some comments.

7 I understand there's one more comment that the
8 Board wanted to make, and then we'll move into hearing
9 from the applicant and the public.

10 So with that, Ms. Burroughs.

11 MEMBER BURROUGHS: Thank you. And again, my most
12 sincere appreciation of all the comments that have been
13 given today by staff and the Board and the public. And in
14 particular, in lieu of Ben's comment about being in a
15 difficult situation and trying to form a win-win
16 situation, I would like to call up another staff member
17 that's been working with the Board in particular on the
18 permitting to see if we can find a -- maybe an alternate
19 solution in thinking out of the box of how we might
20 proceed forward today.

21 And with that, Mr. President, I would like to call
22 up Steve Dawson.

23 PRESIDENT CARTER: Okay. Mr. Dawson, would you
24 like to come up and address the Board, please.

25 MEMBER BURROUGHS: The two things I would like to

1 have you speak to are, number one, if you could briefly
2 talk about the permitting issue and the importance of why
3 staff needs to review this application before we vote on a
4 permit, number one. And No. 2, if you have a suggestion
5 of how we might proceed in a win-win situation, an
6 alternative way of issuing movement forward on this
7 project.

8 Thank you.

9 MR. DAWSON: Good afternoon, President Carter,
10 Members of the Board. Steve Dawson, Department of Water
11 Resources, Floodway Protection Section.

12 The importance of the review process is to resolve
13 all technical issues associated with this project. At
14 this time, I have not had any concrete answers from the
15 Army Corps of Engineers. And with that, I can't really
16 make a recommendation to move forward to the chief
17 engineer. I can't put the permit forward in a draft form
18 for review without having the confidence in the technical
19 review process. And to put that ahead without the Corps
20 of Engineers review would not be an appropriate action.

21 As to the second part, there is a method where we
22 could issue or I could generate a draft permit that would
23 be contingent upon submittal of 100 percent of the
24 drawings to the Army Corps, to the Department of Water
25 Resources, and to the State Reclamation Board for review,

1 approval, and then submittal through the due process,
2 through the Rec Board, that we normally use.

3 Right now, I don't know of the time frame for
4 receiving a hundred percent plans. I know that we have
5 not received acceptable plans that I can move forward on,
6 but I believe we can generate a permit that will be
7 potentially an authorization on the project and concept
8 only, but not technical approval.

9 I can elaborate on that, but that's simply stated.

10 MEMBER SUAREZ: May I ask a question?

11 PRESIDENT CARTER: Yes, go ahead.

12 MEMBER SUAREZ: Would the project have to come
13 back to the Board for a vote after you're done with the
14 technical approval under your scenario?

15 MR. DAWSON: It would not -- if there was not
16 something that developed that would be involving a policy.

17 PRESIDENT CARTER: Any other questions of
18 Mr. Dawson?

19 VICE PRESIDENT HODGKINS: I'm glad to hear you
20 explain in a little more detail what would be involved.

21 MR. DAWSON: Of what portion? The technical
22 review?

23 VICE PRESIDENT HODGKINS: I think what I heard you
24 say was there would be a permit issued that was in effect
25 conceptually but not technically approved.

1 MR. DAWSON: It would be containing technical
2 guidelines contained in title 23. It would be the same as
3 a technical permit with added conditions that it is not
4 valid until certain steps have been met and be done in the
5 future. And they would be technical steps only, not
6 policy. So the Board could look at this under policy,
7 make their decisions, then delegate through the general
8 manager the ability to make the technical decisions
9 through due process.

10 VICE PRESIDENT HODGKINS: Thank you. I think
11 that's a reasonable approach if we get to a point where
12 we're more comfortable making a decision.

13 MEMBER BURROUGHS: I would like to know if Jay
14 along with our other staff would be supportive of this.

15 GENERAL MANAGER PUNIA: In reality, this permit
16 may not mean much because it will be contingent upon
17 further review and further approval by our technical
18 staff. But that's an option for the Board to consider.

19 MEMBER BROWN: Mr. Chairman, the thought of
20 delegating our authority to staff, our authority and
21 responsibility to the staff on this, troubles me.

22 PRESIDENT CARTER: Any other questions for
23 Mr. Dawson?

24 MR. DAWSON: Okay. Thank you very much.

25 PRESIDENT CARTER: Okay. At this time, does the

1 applicant wish to address the board?

2 MR. SHAPIRO: Good afternoon, again, Members of
3 the Board.

4 I made a list of the key concerns that I heard
5 from staff members and from Board members. And I want to
6 try to go through those first and in sufficient detail to
7 answer your questions but not exhaustive so as to belabor
8 the process.

9 And once I do that, perhaps I can pick out a few
10 key slides from the PowerPoint presentation that are still
11 appropriate, recognizing that many probably are not at
12 this point.

13 I do want to start by saying that I agree with a
14 number of the statements made by Steve. I think we're
15 both saying in slightly different ways that certain
16 aspects of this process are broken. And I have spoken
17 with Jay and with Steve and with Scott Morgan in the past
18 about the fact that your regulations really are tied to
19 people putting steps on levees, putting a pipe through a
20 levee. And things have changed. We have applicants like
21 SAFCA and Three Rivers and LD1 and all these others that
22 have been coming forward who are basically proposing
23 fundamental changes to the system. And we won't have a
24 frame work here at the Reclamation Board to accommodate
25 that. And I've offered in the past and I'll reiterate my

1 offer to work with your staff or your legal staff to be
2 part of some sort of a reconsideration committee to start
3 thinking about how to change things.

4 Regrettably, it doesn't help us today. We have a
5 process and a project which has real consequences by not
6 moving forward. So I want to start out of by clarifying
7 what we're asking for. What Steve Dawson just presented
8 to you is really not that far from what we're seeking.

9 We recognize that you don't have a draft permit in
10 front of you today. It would be difficult for you to
11 approve the issuance of a permit when you don't have it in
12 front of you. What we are seeking is for the Board to
13 make the key and essential policy considerations that need
14 to be made.

15 So look at, is the alignment acceptable? Do you
16 think a setback levee should be constructed? Is this a
17 project that should go forward?

18 Make the key CEQA findings, which this Board
19 cannot delegate, and then instruct your general manager to
20 issue a permit with the terms and conditions your general
21 manager thinks appropriate subject to any constraints or
22 discretion you give your general manager. And it may be
23 contingent on certain things. It certainly will need to
24 be contingent on the 408 approval. The Corps is going to
25 stand up and tell you that.

1 I hear your staff say it should be contingent on a
2 hundred percent plans and specs. We don't object to that.
3 We are not seeking the ability to go out tomorrow and
4 build a levee. We are seeking to get this policy
5 determination made, which allows us to move forward with
6 the other dominoes that fall once that happens.

7 So with that, let me go through a few of the key
8 points I heard.

9 It's important to clarify the applicant, Three
10 Rivers, had all of the documents in by all of the
11 timelines that we were requested to have it in by. The
12 documents that have been identified that were late was a
13 Corps letter. And I will admit it came in later than the
14 date that Steve requested it. But there was an e-mail
15 before the date that it was requested, before the date by
16 which it was requested, that basically said the Corps was
17 buying in the process.

18 And then there was DWR's consideration as well.
19 And that letter didn't come in until later in the process,
20 but I had never understood it to be a condition precedent.

21 What I have put together in this binder -- and I
22 will respect your request, President Carter, of not going
23 through it page by page; it was never my intent -- is some
24 of the key documents that I think the Board needs to have
25 in order to make a determination today.

1 And so, if you bear with me, just turn to the
2 first page, which has the table of contents and I will
3 identify some of the documents and then we'll go through
4 this with relative speed as we answer some of the
5 questions. It seems to me you should have the
6 encroachment permit application. So that's Tab 1.

7 Tab 2 is a chronology of every time we've
8 presented or spoken about this project to the Board or the
9 subcommittee.

10 Tab 3, which is the item that I want to speak to
11 now is a white paper that proposed permit issuance coming
12 to the Board today. This white paper was bought into by
13 your staff and by the Corps. And if you flip to the third
14 page in that section, you would see the very e-mail we've
15 talked about, at the bottom of the page. This is the
16 e-mail that Steve spoke about, where he said, "These are
17 the things that I need in order to have this be ready for
18 the Board." And he noted the detailed design drawings on
19 the tie-ins and a letter from the Corps stating no
20 objection. And he does indeed in the introduction, needs
21 to be in by December 5th. He's absolutely right.

22 The design drawings were in, I think the date of
23 the 29th. And actually, if you look at tab 5, you can see
24 the e-mail conveying the design drawings. It came in
25 November 29th. So that was in on time.

1 But the other item, No. 2 at the bottom of the
2 page, the e-mail from Steve is the letter from the Corps.
3 And if you will flip to Tab 4, you will see there's a
4 letter from the Corps. Indeed, it's dated December 11th.

5 But if you look at the second page in Tab 3.

6 MEMBER BROWN: I have November 20th on the e-mail.
7 What's the date on it?

8 MR. SHAPIRO: On which e-mail, sir?

9 MEMBER BROWN: Well, where you say, "The district
10 engineer has no objection." Page 3 you said.

11 MR. SHAPIRO: Correct. Tab 3 page 2. You will
12 see the e-mail from Jim Sandner at the top of the page,
13 and you will see the e-mail was dated November 28th. So
14 prior to the December 5th date, the Corps did say they
15 were okay with it, but I fully agree with Steve, they did
16 not send the letter in time. That letter not coming in
17 time is the -- I think the issue of Steve not having
18 opinion able to prepare the staff report. And so I
19 acknowledge, he didn't get that letter in time.

20 So let's jump back to some of the other key issues
21 that I heard earlier today.

22 PRESIDENT CARTER: I thought the issue with the
23 Corps letter was timing but more importantly content.

24 MR. SHAPIRO: That is the second issue, and I will
25 speak to that as well. And I know Jim Sandner will as

1 well.

2 The second thing that I heard today was that you
3 are unable to issue a permit when the plans and specs are
4 not at 100 percent. And it's actually not what the
5 regulations say. Your regulations -- and it was quoted
6 earlier, section 8.B.3, does say you need complete plans
7 and specs. But it says, "Plans and specs need to be
8 complete for an application to be complete." Doesn't say
9 to issue a permit.

10 But what's most interesting is 8.C, the section
11 right after, "The Board may waive minor variations in an
12 application." So your regulations give you the ability to
13 say, "We deem this application complete. We can proceed
14 with the permit now." Doesn't say you can't issue a
15 permit. It says an application is complete when plans and
16 specs are complete. The Board can say, "They're at almost
17 90 percent. We deem that appropriate. We're going to
18 issue a permit."

19 Again, we're not advocating we construct before we
20 have given you a hundred percent plans and specs. But it
21 shouldn't hold back the ability to issue the experiment.
22 And as has been noted earlier, a standard provision in
23 most of the permits that I have seen recently state, "We
24 won't construct until we've handed you 100 percent plans
25 and specs."

1 The next comment that I heard, and I may get this
2 a little wrong, and I will rely on Ric Reinhardt if I do,
3 because I only heard it for the first time today, was
4 Steve's comment about concerns about cumulative impacts --

5 (Cell phone rings.)

6 MR. SHAPIRO: Are the saints marching in?

7 And the concern that the 1996 study said that
8 there needed to be a cumulative impacts analysis of
9 hydraulic impacts from Yuba down here at the Sacramento
10 level.

11 If you actually go back and look at that language,
12 what it says is, "We think there will need to be levee
13 raises." The impacts of levee raises is what we require
14 of cumulative impacts analysis. We're not raising any
15 levees by this. But even moreso, following that study was
16 a 1998 EIS/EIR done on the Yuba Basin Project that looked
17 at exactly that. So there has been a study -- it's an
18 EIR, so you have certified that document, and you have
19 concluded there are no hydraulic impacts as a result of
20 those levee raises.

21 On top of that, in 1999, Congress in the '99 WRDA
22 already authorized those levee raises.

23 And then the state legislature in AB 1147
24 authorizes those same levee raises.

25 So just to summarize and make sure it's clear,

1 there has been cumulative study. It was in the EIS/EIR.
2 You certified it. And on top of it, Congress has
3 authorized the raise, and the state legislature has
4 authorized the raise. And by the way, we're not raising
5 the levees.

6 So not only doesn't it seem directly on point,
7 even if it was on point, it's already been analyzed. It's
8 already been authorized.

9 There was a comment about concerns about not
10 having a staff report. And I share your concern about
11 that. As many of you know, most of my clients are
12 probably agencies. And as a public agency attorney,
13 there's a process to have that staff report. But I think
14 it's incorrect to say that as a result of not having a
15 staff report, you have a one-sided view.

16 First of all, Department of Water Resources is an
17 independent reviewer, and it will speak to the project
18 today. The Corps is an independent reviewer, and it will
19 speak to some aspects of the project today, though
20 admittedly it hasn't all analyzed the entire project.
21 There's also been a lot of dialogue, and there's been a
22 lot of dialogue between your staff and us that has
23 resulted in us having additional submittals and answering
24 many of the questions. So it's really not the case that
25 this is a one-sided presentation, because you will hear

1 from others and this has been an iterative process.

2 What we're asking you to do today essentially is
3 to make the necessary CEQA findings and to make the policy
4 decision that you want to move forward and then to
5 instruct your general manager to issue a permit with the
6 terms and conditions he believes appropriate. And we
7 understand that it may say the permit is conditional on
8 certain things. We're okay with that.

9 What we don't want to do is have a number of
10 potential scenarios occur, none the least of which is,
11 while I agree with Scott, who I think is the one who said
12 this, and with Ward Tabor, who I know has said this, and
13 with Ginny Cahill, who has I know said this -- while I
14 agree with them, that in January you can still issue
15 permits, even under the new legislation, I don't want
16 Three Rivers to be a guinea pig if someone decides to
17 challenge that. I'd like to move past the policy
18 determination today and not risk what happens if that gets
19 challenged.

20 I want the permit in place so funding can start to
21 flow from DWR the day that contract is signed. I want
22 that permit in place so funding starts to flow from the
23 developer contract as well. These are essential dominoes
24 that without them falling in order, the program doesn't
25 work.

1 So with that, let me pick a few key slides of my
2 PowerPoint and not bore you with the entire thing.

3 You know this project has 200-year benefits; you
4 know it has regional benefits and environmental benefits;
5 you know the importance of it. But what I found
6 interesting is I went back through the record and I
7 thought about the problem of not having a staff report is
8 that this is the ninth time you have been briefed on this
9 project in some way, shape, or form. There's been three
10 subcommittee presentations, each three to four hours long.
11 There's been four Rec Board meetings in which we made
12 presentations on alignment on funding, on the connection
13 to section 104. There was a tour you took.

14 And I would hazard to guess you know more about
15 this project than probably any other project in the years
16 you have been sitting on this Board. And even without a
17 staff report, you have lots of information in front of
18 you, and there's lots of record that already exists. And
19 on every one of these dates that's on these slides is a
20 record that exists about the facts of this project.

21 And as I said, this matters now because of funding
22 and because of the need to get the land acquisition in
23 place so the construction can start so we can finish in
24 2008.

25 Here's the requested action slide.

1 Make the necessary CEQA findings. We've prepared
2 CEQA findings for you. We'll go through them at the end
3 of this so that you can actually make those findings.
4 We're not suggesting you violate your obligations under
5 CEQA. I will go through them. They are in there. And
6 approve issuance by the general manager of the permit.
7 And as I say at the bottom, add any conditions you believe
8 appropriate, anything you think that needs to happen
9 before we can go out and start constructing.

10 So you have seen the map many times. I will skip
11 right over it. You know the benefits of this project.
12 It's a brand-new levee where there's an old sandy levee in
13 place. You know that it benefits Marysville and Yuba
14 City, two communities that we hope to get better flood
15 protection for but it won't happen for a number of years,
16 and this helps them significantly.

17 You know this is consistent with the governor's
18 FloodSAFE California program. That's why we're the
19 recipient of the largest grant under the FloodSAFE program
20 this year. You know it creates 1,550 acres of riparian
21 corridor, primarily for agricultural land. My Board
22 incidentally has adopted a resolution urging staff to find
23 a way to keep it in agriculture. We'll be sharing that
24 with the Department of Water Resources. While we own it,
25 it will stay in agricultural. Once you own it, because

1 it's going to the Sacramento-San Joaquin Drainage
2 District, you can have some influence of what happens to
3 it afterwards.

4 So President Carter, your comment earlier about
5 not letting it fall into disarray and be lost in potential
6 mitigation land, we're going to keep it in ag land. We're
7 going to hand it to you as the managers of the
8 Sacramento-San Joaquin Drainage District, and you will
9 have the chance to influence what happens to it then,
10 assuming you can resolve Butch Hodgkin's issues of budget.

11 A hydrology to setback levee. This has been
12 presented numerous times as well -- a chronology of the
13 nine number of times back and forth with your staff. I'm
14 going to skip through this and just move right to this
15 chart. And if you have specific questions on hydrology,
16 Ric Reinhardt is here and he can address some. But it's
17 pretty simple and straightforward, as you see.

18 Lowers the water surface of the 200-year storm by
19 one and a half feet at Marysville and Yuba City and lowers
20 it by almost 3 feet near Olivehurst. It has a very slight
21 impact of one-tenth of 1 foot downstream of the setback
22 for a very short reach. But in that reach -- other than
23 that reach, we do not believe it has an impact.
24 Incidentally, we have letters of support from SAFCA
25 downstream, LD1 across the river; Sutter County across the

1 river, and Yuba city upstream.

2 So there's no one objecting to the hydraulic
3 impacts and the hydraulic impacts were analyzed in a
4 cumulative impacts analysis in our EIR. It's been
5 thoroughly studied.

6 Alignment of the setback levee. The alignment has
7 been accepted by the Department of Water Resources. If
8 you look at Tab 6, you will find that memo Jeff Twitchell
9 spoke about earlier. It's actually addressed to Jay
10 Punia. I think it came yesterday, Jay. If I'm not
11 mistaken. And in it, DWR supports the current alignment.
12 The Army Corps of Engineers has bought into the alignment
13 as well.

14 And there have been a number of adjustments over
15 time. They've all been designed to ensure public safety.
16 The Rec Board, and I want to pick up on the language that
17 Mr. Rice used earlier, was very effective in actually
18 mediating between us and some landowners. And that legacy
19 of being more sensitive to those landowner concerns will
20 continue. I think it's remarkable and well-deserving and
21 can cause some changes on some things we were going to do,
22 but today we're supportive and we have the Rices here to
23 support this project, moving forward.

24 The alignment is set to assure widening of the
25 floodway, as you can see. The expanded floodway is the

1 cross-hatch on the bottom. The yellow is the soils we
2 would rather not have a levee on. As you can see, the
3 current levee is on it. The new levee will be
4 significantly off of it. It's still on it in spots, but
5 those areas are mitigated. All the red little spots,
6 those are historic boils. You will notice, every one of
7 those is on the waterside of the new levee. Significant
8 safety improvement.

9 Finally, a profile in the area. You can see we
10 set the levee back where we did in part because there's a
11 berm there. There's a raised area. And that allows the
12 levee to be shorter, and a shorter levee is a safer levee.
13 Like I say, a shorter levee is a happy levee. But at a
14 minimum, it's a safer levee.

15 Finally, this slide shows the areas where we've
16 adjusted the alignment, including for the Rices, to try to
17 accommodate local concerns. It was a painful process for
18 us. We didn't learn fast, but we did learn.

19 Finally, every issue that we've heard from staff
20 this last week, we believe has been addressed. And I will
21 go through those, and basically I will move right to the
22 resolution and see if you have any questions.

23 As this dialogue -- this diagrams the two
24 requirements to have been on today's agenda. As I already
25 talked about, we agree the Corps letter did not come in

1 within time, but there was an e-mail. Each of these
2 documents is contained in the binder.

3 So the first concern is the Board must have a
4 staff report to act. I just want to clarify, there is no
5 legal requirement for a staff report. It's not in
6 Bagley-Keene. It's not anywhere in the Administrative
7 Prepares Act. It's not a legal requirement. Having said
8 that, as a public agency lawyer, I too would like a staff
9 report. But nonetheless, you have heard a tremendous
10 amount about this project. You've heard from your staff
11 some of the staff's concerns. We are able to address
12 those concerns. This is not a reason to not be able to
13 act today.

14 Second, the December 11 Corps letter did not serve
15 Steve's needs. President Carter, this was your comment:
16 It wasn't just the date of the letter, it was the content
17 of the letter. That letter, which is in Tab 4, states the
18 Corps has no objection to permit issuance.

19 Steve's desire is that the letter says there are
20 no adverse impacts. That's the determination, as Steve
21 said, that would be made under 20810. My understanding,
22 and you will ask Jim Sandner yourself, is that when the
23 Corps goes through a 408 process, it doesn't do a 20810
24 process. In essence, a 20810 process is a technical
25 determination. It is a technical determination that we

1 meet the technical requirements of any changes. 408 is
2 bigger. It has the technical determination list that's in
3 20810, but it has policy issues. Should a setback levee
4 go in? It has environmental issues. Is there an impact?
5 It has maybe a broader hydraulic analysis that would
6 otherwise be in place. That's the process that will go
7 through for 408. That process results in an analysis and
8 a determination by headquarters of the Corps. That's the
9 process we're going through now.

10 The Corps can't send you a no-impacts letter
11 because the 408 process is what will generate a no-impact
12 letter. In my view, it's either 20810 or 408 in terms of
13 your approval letters, and you can't ask for a 20810
14 letter in 408. Again, Jim will either agree or disagree,
15 but I think that's the way the Corps is pursuing this.

16 Finally, it's important to note, your letter to
17 the Corps that started 408, in Tab 7, provides the
18 language that Steve's looking for. You have already
19 determined that there's no impact. You have already said
20 there's no detrimental impact to the system. So it
21 doesn't make sense to me we were to hold this up for the
22 Corps to tell you what you have already told the Corps.

23 The alignment was not yet final, was raised as an
24 issue. We're unaware of any outstanding issues on the
25 alignment. I understand DWR asked a few related

1 questions, but we do not believe they affect the
2 alignment, and indeed in Tab 6, DWR has bought into the
3 alignment.

4 The plans and specs are not at a hundred percent.
5 I've already stated, it's not a requirement to move
6 forward. But we understand, if you want a condition that
7 they will be a hundred percent, that's fine with us. We
8 absolutely understand.

9 And we've also heard the condition that the permit
10 is not needed now. It's not needed for construction. But
11 it is a necessary approval to start our dollars flowing.
12 We have great hope that we will be signing in mid
13 January -- when I say that, Eric probably shivers. He may
14 be saying late January -- for a DWR contract.

15 Section 12.C of that contract says we don't get
16 the money until we have all our permits. Without the
17 money, we can't do land acquisition. Without land
18 acquisition, we can't construct in April. If we can't
19 construct by the beginning of April, we can't get this
20 thing done in 2008, and it's another flood season for
21 those folks.

22 So in summary, 200-year protection, regional
23 environmental benefits. We need this permit to get
24 started. We've been seeking to come before you for a
25 number of months, and it's just time. And you have looked

1 at this issue as a Board or as a subcommittee now nine
2 times. We think you understand the issues.

3 So let's jump to, if we can, the final tab in this
4 binder. And I will show what we've prepared, recognizing
5 you did not have a staff report. We've prepared a
6 resolution. The resolution really does two things: It
7 makes the necessary CEQA findings, and it authorizes your
8 general manager to issue that permit.

9 The CEQA findings section is really divided into
10 two parts. There's all the ones on page 2 where we
11 identified each of the environmental impacts from the EIR,
12 which did not rise to the level of significance --
13 farmland conversion, temporary water quality impacts,
14 sensitive habitat, special status plants, elderberry
15 beetle, pond turtle, giant garter snake, Swainson's hawk,
16 raptors, archeological and cultural resources and human
17 remains, traffic hazards during construction, emergency
18 response during construction. A great number of those,
19 there was either no significant impact or we were able to
20 mitigate the impact. A few of them we were not able to
21 mitigate the impact.

22 For example, farmland conversion. There is some
23 farmland conversion. We don't think it's significant, but
24 there is some out there. A few of these as well.

25 So what we're asking you to do, on the top of

1 page 3, is your statement of overriding consideration.
2 This is the standard process by which a California public
3 agency says, yes, there are impacts but we need to balance
4 those impacts against going forward.

5 Going back to President Carter's and Member
6 Burroughs's comments earlier about a balance, a win-win,
7 this is exactly the same. You have to balance a few
8 impacts against the positives of the project. And so this
9 document makes the finding that you are saying there
10 are -- there is a statement of overriding consideration.
11 This project should move forward. It's the same statement
12 of overriding consideration made by the Three Rivers Board
13 in February. It's the same statement of overriding
14 consideration that was not challenged under CEQA.

15 We're ten months into that approval. There's a
16 30-day statute of limitations on challenging the approval
17 once it's filed. It was not challenged. There's no CEQA
18 challenge in our lawsuit. You would be making the same
19 findings that Three Rivers made.

20 The key language on approval of the project, No.
21 5, "Based on the foregoing, the Reclamation Board hereby
22 approves issuance by its general manager" -- not by you,
23 by its general manager -- "of encroachment permit and all
24 actions and activities necessary to issue and implement
25 said approval."

1 Among other things, the Board directs staff under
2 23 CCR Section 5.B, which is your delegation authority, to
3 issue an encroachment permit consistent with this approval
4 and file a notice of determination for same.

5 So that's what we're requesting. Make the CEQA
6 findings, authorize your general manager, inform him of
7 conditions you seek. And I heard too thus far, 408 and
8 plans and specs. And allow us to move forward with our
9 project.

10 Make the policy determination that you want a
11 setback levee constructed. It's really the only issue
12 before you as a policy level anymore.

13 If you have any questions, I'm available. Paul
14 Brunner and Ric Reinhardt are available. Alberto from our
15 design team is here. We're happy to answer any questions
16 you have.

17 Thank you for the chance to present.

18 PRESIDENT CARTER: Thank you.

19 Questions for Mr. Shapiro?

20 MEMBER RIE: Yes. When did you submit the
21 application to the Board and when was the EIR certified?

22 MR. SHAPIRO: The application was first submitted
23 on May 1, 2006. I believe it has changed a few times, as
24 we have debated, whether it needed to include just the
25 tie-ins or the tie-ins and degradation. I don't have the

1 other dates with me. The EIR was certified in February of
2 2007. And my guess is, is that your resolution probably
3 has the date in it.

4 PRESIDENT CARTER: The original application for
5 not having a setback along this section was a repair in
6 place?

7 MR. SHAPIRO: I'm sorry. Mr. Carter, can you say
8 it again?

9 PRESIDENT CARTER: Wasn't the original
10 application, that you originally selected, a different
11 option under the EIR, and it was a repair in place, and
12 that was changed approximately a year ago?

13 MR. SHAPIRO: I don't have --

14 PRESIDENT CARTER: After the application was
15 submitted.

16 MR. SHAPIRO: I don't have the date of the
17 changes. We never selected the strengthen in place
18 because we never certified the EIR to do a strengthen in
19 place. We may have submitted documentation to you
20 earlier. So I apologize. I can get the dates for you,
21 but I don't know them offhand.

22 MEMBER RIE: It's okay. It sounds like it's been
23 over a year.

24 So the final EIR that was certified in February,
25 that was for the setback levee; correct?

1 MR. SHAPIRO: That's correct. We never selected
2 under CEQA the strengthen in place, and we never certified
3 the EIR until we selected the setback.

4 MEMBER RIE: I'm a little confused. Mr. Bradley,
5 you said earlier in your presentation that the CEQA was
6 not certified.

7 Did I hear that wrong?

8 CHIEF ENGINEER BRADLEY: I do not believe I said
9 that.

10 MEMBER RIE: Okay.

11 CHIEF ENGINEER BRADLEY: I did not say that CEQA
12 had not been certified.

13 MEMBER RIE: So it's your understanding that CEQA
14 is done; they have a certified EIR.

15 CHIEF ENGINEER BRADLEY: For their project, yes.

16 The question is whether that's adequate for you to
17 make the decision on the system impacts.

18 MEMBER RIE: Okay. Thank you.

19 PRESIDENT CARTER: Any other questions for Mr.
20 Shapiro?

21 MEMBER SUAREZ: I have one. What are the
22 findings?

23 MR. SHAPIRO: The findings concluded there are no
24 hydraulic impacts. It concludes that because we traced
25 the water upstream and downstream and found there was no

1 negative impact, and that was confirmed by your own
2 EIR/EIS for the Yuba Basin Project, which basically
3 concludes the same thing.

4 MEMBER SUAREZ: Mr. Shapiro, I appreciate your
5 work and your presentation. I want to take this
6 opportunity just to remind you -- and it's been a long
7 process for you and your client. As we all agree, we
8 can't continue functioning this way. And there are
9 serious staff issues and limitations that our Board has.
10 And we kind of depend on the kindness of strangers at
11 times to make the process work.

12 These are out-of-the-ordinary circumstances that
13 we face with this decision. But just because they are
14 uncommon, and it's an uncommon situation, it doesn't mean
15 that it's inappropriate. And I do agree that it's quite
16 appropriate for us to proceed. But I hope I have your
17 commitment and the commitment of other applicants in the
18 future to work, continue working, helping our staff in
19 this process function a little more smoothly.

20 MR. SHAPIRO: You do. And I agree. And for other
21 clients, you know, Ric Reinhardt and I work together for a
22 number of clients, and we have started a series of
23 programmatic meetings, big picture, what are we doing over
24 the next few years, with regulatory agencies to say, how
25 do we make this process clear, how do we not find

1 ourselves in these situations?

2 SECRETARY DOHERTY: Perhaps it doesn't apply to
3 this. But according to some situations, the general
4 manager cannot be delegated to make a decision per Article
5 2, section 5.A.3 of title 23 of the California Code of
6 Regulations. So I don't know whether we're going to be
7 affected by that or not.

8 Mr. Punia, will that affect us in this particular
9 situation?

10 GENERAL MANAGER PUNIA: In my judgment, if the
11 Board delegates, then I have the authority to issue the
12 permit.

13 MR. SHAPIRO: I was just going to say that's why
14 we've asked you to make the CEQA findings because we don't
15 think you can delegate that.

16 MEMBER BURROUGHS: I have a question. Why were
17 you not able to present your information to our staff in a
18 timely manner?

19 MR. SHAPIRO: I guess I need to ask you to break
20 down which particular request because the e-mail that's in
21 the tab indicates that there were two documents that
22 needed to be received by a particular date to be here.

23 One was within our control, and we submitted it in
24 time. And one was from the Corps, which was not in our
25 control. And while the Corps letter came in later, there

1 was an e-mail before that date buying into the process.
2 So in regard to the specifics, our material was in on
3 time.

4 If there are other documents over time that staff
5 believes were not in on time, I'm happy to bring up our
6 team to try to answer that.

7 PRESIDENT CARTER: Is that satisfactory, Steve?
8 Do you have any comments about that?

9 CHIEF ENGINEER BRADLEY: The e-mail, that's one
10 person at the Corps without the authority to approve that.
11 Now, his recommendation does go forward. And I actually
12 responded -- I actually saw a draft of some other letters
13 that were proposed, and I sent some comments to the Corps
14 regarding approval of that under 20810. It's my expressed
15 concern that they weren't approving it in the correct
16 manner and they did not state why, that the district
17 engineer had found that there were no adverse impacts.

18 And I think in the future, the Board might want to
19 consider sending a letter to the Corps asking that
20 specific thing be included in their 20810 approvals,
21 because that's what's required under 20810.

22 PRESIDENT CARTER: If there are no further
23 questions of Mr. Shapiro, we still have to hear from DWR,
24 the Corps and the public.

25 MR. SHAPIRO: Thank you.

1 VICE PRESIDENT HODGKINS: Could I ask one question
2 on the 20810? The reason 20810 comes into play here,
3 which is a federal regulation that applies to the Corps,
4 and through our project cooperative agreements, we agree
5 to comply with that as well, is because we have agreed, or
6 is there a Rec Board regulation or a state law under state
7 law also that says 20810?

8 CHIEF ENGINEER BRADLEY: Both. The 20810 falls
9 out -- comes into play when you have a permit, a request
10 to do something.

11 And my problem with tying up the 408 is, 20810 is
12 not under 408 so you can go ahead and ask, the Board can
13 ask, to alter the project without a permit. You do not
14 need a permit before you to alter the project. You may
15 have an idea that you would like to see the Corps
16 implement -- you could direct staff to work on that. You
17 could send a request without a permit. It is not tied to
18 a permit. Although this Board has tied all the 408
19 actions to a permit, it does not have to be.

20 It's a nonfederal sponsor's request to the Corps
21 to consider altering the project that has been turned over
22 to us. 20810 revolves around a permit. And it would seem
23 to me -- this is federal law, and I'm not a federal
24 attorney or a federal employee. But that we would get 408
25 approval in that the Corps would have found that there

1 were no adverse impacts. They could use that when they
2 submit a 408 letter, saying we have determined that to be
3 the case.

4 That has not yet been done for this project. And
5 I'm not sure why 20810 would not apply when you have a
6 permit before you.

7 MR. SHAPIRO: Member Hodgkins, if I can offer one
8 thought. 20810, by its own terms, applies to the minor
9 operations and maintenance altercations of the project.
10 That's what it applies to. That's why we need 408,
11 because this isn't a minor operation and maintenance
12 alteration. That's why it doesn't seem to me that 20810
13 can apply. By its own terms, it only applies to minor
14 operation and maintenance alterations.

15 PRESIDENT CARTER: Perhaps we ought to hear from
16 the federal authority on this at this point.

17 Is there -- Mr. Sandner, would you like to give us
18 some perspective from the Corps' office?

19 MR. SANDNER: Good afternoon, President Carter and
20 Members of the Board. Jim Sandner, Corps of Engineers,
21 Sacramento District.

22 There has been a determination made by the Corps
23 of Engineers that certain alterations to a federal
24 project, operated and maintained by the local flood
25 protection districts -- that approval for that alteration

1 has to be granted by the chief of engineers at the
2 headquarters level.

3 In this instance, the determination was made that
4 this proposal for RD 784 needed that kind of approval.
5 Under 20810, that is a specific process that we had been
6 utilizing with the Rec Board for decades, and it was
7 fairly clear how we would move through that process.

8 Under 408, that is a specific law that the Corps
9 of Engineers has not actually promulgated regulations as
10 yet. There are a number of task forces that are working
11 on that.

12 In this instance, the Corps of Engineers was asked
13 to give a conditional approval with respect to this
14 project because there seemed to be a critical time frame
15 associated when this permit would be issued for the
16 applicant.

17 The Corps of Engineers made the determination that
18 we could make a recommendation that we would have no
19 objection to the Board granting a permit subject to
20 certain conditions. And one of those conditions was that
21 they would have to go through the 408 process and receive
22 approval for their project all the way up through the
23 chief of engineers.

24 That's a fairly complicated process. We're
25 currently working with the applicant, now, on whether

1 their environmental documentation can be at the level of
2 an environmental assessment or whether it needs to be an
3 environmental impact statement.

4 Under 408, we look at policy. We look at
5 environmental. We look at technical. All those issues
6 are covered under the 408 process.

7 Under the 20810 process, much of what we have been
8 working with over the years on those kind of
9 encroachments, we have templates in place for people who
10 want to build a set of stairs, people that want to put a
11 pipe through a levee, people that want to put a ramp up
12 the side of a levee. And that approval process moves
13 fairly quickly.

14 I don't really understand Mr. Bradley's concern
15 about a determination needs to be made under 20810. Under
16 both 408 and 20810, either the district engineer or the
17 chief of engineers needs to make a determination that the
18 encroachment or the alteration will not have an injurious
19 impact to the public interest, and that it will not harm
20 the usefulness of the flood protection works.

21 Again, the Corps of Engineers was trying to
22 accommodate the Rec Board and the applicant by providing a
23 letter that indicated we would not object to a conditional
24 permit.

25 PRESIDENT CARTER: Thank you.

1 Any questions for Mr. Sandner?

2 VICE PRESIDENT HODGKINS: So in your making that
3 statement, and can I push you to the point of saying, you
4 are not concerned that in some way the Corps has violated
5 federal law?

6 MR. SANDNER: We do not believe we have. And we
7 have talked with our counsel with the Corps of Engineers.

8 Again, your action to issue the permit is based on
9 the conditions that we have asked you to place in the
10 permit. Those conditions don't allow the applicant to
11 start any construction until the Corps of Engineers
12 actually pushes approval under 408.

13 VICE PRESIDENT HODGKINS: Thank you, Jim.

14 MEMBER RIE: So if I could rephrase what you said,
15 the Corps has no objections to the Board issuing a
16 conditional permit as long as we put in the Corps'
17 conditions, one of which is to not allow construction to
18 proceed unless the 408 approval is in place.

19 MR. SANDNER: That's correct.

20 MEMBER RIE: Were there any other conditions that
21 the Corps had?

22 MR. SANDNER: There were several other conditions.
23 They are basically kind of standard conditions that we
24 send to you in any recommendation.

25 MEMBER RIE: Like we won't start work before

1 April?

2 MR. SANDNER: Right. Work outside the flood
3 control season and so forth.

4 MEMBER RIE: Okay.

5 MEMBER SUAREZ: If I may, I have one question.

6 Can you just help me understand a little bit what
7 type of considerations you took into play when you made
8 that decision or conclusion that there were no objections?
9 What sort of things did you consider as you were making
10 that determination?

11 MR. SANDNER: Well, again, primarily our condition
12 that we are requiring a 408 approval. There is a specific
13 process in place for 408 approvals, which requires full
14 public disclosure of what goes on with this project and
15 also a full technical review of all of their plans and
16 specs.

17 And as part of that 408, we wouldn't be able to
18 conduct that technical review until we actually had their
19 plans and specs at 100 percent. So again, the time frame
20 that the applicant is working with is dependent upon how
21 quickly they get all that information to the Corps of
22 Engineers. All their environmental documentation, their
23 plans and specs are fully completed, any other
24 requirements that they may have to have in place prior to
25 the Corps of Engineers saying, "We agree that this project

1 is not injurious to the public interest and it is not
2 going to harm the flood protection system."

3 PRESIDENT CARTER: Any other questions for
4 Mr. Sandner?

5 Thank you very much.

6 MR. SANDNER: Thank you.

7 PRESIDENT CARTER: Is there a representative from
8 DWR that would like to address the Board on this?

9 MR. MAYER: Good afternoon, President Carter and
10 Members of the Board. My statement will be brief unless
11 you have questions for me. I just wanted to point out
12 that DWR did issue on December 11th a memo to General
13 Manager Punia indicating that we concur on the alignment
14 for the proposed setback levee and that we have no
15 objection to the Board taking action as was agendized.

16 And we made that statement actually following up
17 on earlier conversation with Board staff that occurred
18 several days prior to that. So this was simply the
19 written follow-up that was requested, indicating that this
20 would be DWR's conclusion, and so it's been about two
21 weeks since that's occurred.

22 And we anticipated at that time that there would
23 be essentially an overall permit considered by the Board
24 that would have many conditions including a condition
25 about no work proceeding until 100 percent plans and

1 specifications had been submitted and approved.

2 And we knew at the time, and for some time prior
3 to that, that it was very unlikely we're going to see a
4 hundred percent drawings at this time frame. That's never
5 been an issue for us. We anticipated that a Board could
6 issue a permit without those, and that DWR is likely to be
7 in a position of executing a grant agreement with that
8 same condition. And this had been done occasionally in
9 the past by the Board.

10 The largest one I can think of is when the Natomas
11 Improvement Project by SAFCA in the early '90s, under
12 which the Board issued a master permit. There was a
13 conceptual nature in approving that \$80 million project,
14 which was then followed up with numerous specific permits
15 as drawings were submitted and approved.

16 There have been other instances as well, and we
17 thought this could occur in this case, and we supported
18 that.

19 So we have no objection to proceeding with
20 issuance of a permit, if that's the Board's choice.

21 PRESIDENT CARTER: Thank you. Any questions for
22 Mr. Mayer?

23 MEMBER SUAREZ: I have just a couple of questions.
24 You have just completed a review of this proposal?

25 MR. MAYER: We have completed a review of recent

1 submittals.

2 MEMBER SUAREZ: Was that a technical review?

3 MR. MAYER: Yes, it is, as well as submittals
4 regarding alignment and considerations justifying the
5 alignment as proposed. So those are nontechnical.

6 MEMBER SUAREZ: And these reviews and
7 considerations are based on a filter of your concerns for
8 public safety as California's manager of public safety
9 when it comes to flood control?

10 MR. MAYER: Well --

11 MEMBER SUAREZ: In other words, was the public
12 safety one of the considerations you took into mind, into
13 the technical review?

14 MR. MAYER: Absolutely.

15 MEMBER SUAREZ: And you will consider your review
16 a robust review?

17 MR. MAYER: I would say we have performed a
18 review. And we are not complete; there is more review
19 proceeding. And we are not at the 100 percent drawings
20 phase, so there will be more reviews in the future. So we
21 know that now.

22 But what we have satisfied ourselves at this point
23 is that we're in agreement with the concept of the project
24 and with the proposed alignment of the setback levee and
25 the conceptual design that we've discussed and some of the

1 issues that I brought forward several months ago when the
2 Board asked me, what are DWR's outstanding issues? We're
3 making progress on those to resolution.

4 For instance, one of them was a low flow gravity
5 drainage structure which we had concerns about. That has
6 been removed from the drawings. Another major issue was
7 the alignment and specifically various pieces of the
8 alignment were passed at. And I think there were a few
9 other issues, like, for example, the tie-ins. And we've
10 recently seen the conceptual tie-ins at both ends. Those
11 look reasonable, but we still have more work to do to
12 review those and agree completely that that's the right
13 approach.

14 MEMBER SUAREZ: I appreciate that. And the reason
15 I'm asking you these very particular and pinpointed
16 questions is because we need to rely on your opinion, in
17 this particular situation, very much, simply because of
18 the situation we're in of not having a staff report. So
19 your specificity is very important for us to make a
20 determination.

21 So it gives me confidence that DWR thinks it's a
22 good project in terms of public safety. And so again, as
23 you provided us your comments, the more concrete, the
24 better.

25 MR. MAYER: Okay. I understand.

1 MEMBER RIE: A question.

2 PRESIDENT CARTER: Ms. Rie?

3 MEMBER RIE: How much money is being provided from
4 the 1E bonds? And could you explain what it really means
5 by "early implementation project"? Does that mean we can
6 wait until 2009 to construct, or 2010? Is there any time
7 constraints?

8 MR. MAYER: What we mean by "early implementation
9 projects" is we know that we need to develop a master plan
10 for the Central Valley and specifically called out in Prop
11 1E an update of the State Plan of Flood Control. And we
12 think it's important to proceed on projects ahead of
13 having that plan. So those are the early implementation
14 projects.

15 So this is the first year of early implementation
16 projects with the bond funds. We don't think it will be
17 the last year. We think that early implementation
18 projects should continue. When we have a plan and we're
19 implementing the plan, they are no longer early
20 implementation projects. They are projects implementing
21 the plan at that point.

22 With respect to the Prop 1E money, the budget
23 contains, for this year, \$170 million in Prop 1E money for
24 early implementation projects. In addition, there's
25 \$45 million of Prop 84 money for the early implementation

1 projects.

2 MEMBER RIE: Following up on your comment with
3 regard to the budget, since the legislature and the
4 governor did approve a budget sometime late, late in the
5 summer, is there any risk if we can't spend the money in
6 this budget cycle, do we risk losing the budget money for
7 these projects?

8 MR. MAYER: This is -- well, the Prop 1E money is
9 good for one year. And after that, if it's not encumbered
10 by June 30th, committed against a project, then it would
11 revert back to the bond funds, still be available for
12 appropriations later. So we would never really truly lose
13 it. It's still accessible as bond funds to us.

14 And that may indeed happen. There might be a
15 little bit of money left over that we find we don't need
16 for projects.

17 MEMBER RIE: But if this Board can't issue a
18 permit for whatever reason, is there a risk that this
19 money could be redirected someplace else for another
20 project?

21 MR. MAYER: There were no other -- well, there
22 were three other projects that together amounted to
23 \$211 million in state contribution towards the projects.
24 There were no other projects that qualified and met the
25 criteria that we would plan to fund. So if this project

1 were not funded, which I think is your question, this
2 year, then that money, we wouldn't be able to commit it
3 and I think it would end up reverting.

4 MEMBER RIE: The applicant had mentioned that you
5 and some of the other applicants were working on some sort
6 of funding agreement for mid January. And one of the
7 requirements is that permits be issued for the funding to
8 trigger. Could you comment on that?

9 MR. MAYER: Could you clarify that question for
10 me?

11 MEMBER RIE: I don't know. The applicant brought
12 it up, that there was a funding agreement that -- I think
13 it was SAFCA, Three Rivers.

14 MR. MAYER: We're working on funding agreements
15 with them.

16 MEMBER RIE: And one of the requirements of this
17 funding agreement, in order for the money to be allocated
18 to their projects, permits must be issued.

19 MR. MAYER: Well, we can commit money to the
20 projects through the funding agreements, but the work
21 can't proceed unless a permit is issued as well. So I
22 would like to correct an earlier statement made a minute
23 ago. When we commit funds, they would stay committed, but
24 at some point if a permit isn't issued, we would have to
25 decide whether to continue that commitment or if it's

1 unlikely a permit would be issued and perhaps uncommit the
2 funds.

3 MEMBER RIE: So there's a possibility that the
4 funding could be lost.

5 MR. MAYER: Yes. I believe that's true.

6 MEMBER RIE: Okay.

7 MR. MAYER: We would have to ask ourselves, at
8 some point, does it make sense to continue a commitment on
9 a project that's not going forward?

10 VICE PRESIDENT HODGKINS: I have two questions.

11 The applicant stated that a condition to any
12 funding being transferred to the applicant was that they
13 get all of the permits. Is that, in fact, your
14 understanding? And along with that, is it your
15 understanding that DWR will allow funding to go to the
16 applicant assuming they have all the permits in an
17 advanced basis to assist in properly acquisitioning those
18 funds?

19 MR. MAYER: The funding agreements have a
20 provision that -- we're actually working on this aspect of
21 it, and it came up in recent discussions, that we can
22 advance funds for work that is permitted. And so the work
23 can be phased for a particular project, provided each of
24 the phases stands alone and delivers a project -- provided
25 a distinct deliverable to the state. And we can only

1 advance funds if all of the permits are in place for a
2 particular phase, and then the work is to proceed.

3 So if pieces are missing, permits and approvals
4 are missing, then we wouldn't be advancing the funds for
5 that work.

6 VICE PRESIDENT HODGKINS: The second question, the
7 applicant has provided us a resolution and one of the
8 items in this resolution. You know, it's not a binding
9 condition. But it is that "the Reclamation Board and U.S.
10 Army Corps of Engineers, engineering -- the work is in
11 compliance with those as well as FEMA geotechnical
12 requirements, through levee seepage and underseepage of
13 the water surface elevation in a hundred-year flood
14 event."

15 I'm thinking back to an unresolved technical issue
16 some time ago. And that was whether the geotechnical
17 criteria for underseepage was going to be based on some
18 appropriate exit gradient at 100 year or top of levee or
19 200. I just don't want to adopt something that is not
20 consistent with where you folks intend to go. I mean,
21 it's a factual statement.

22 MR. MAYER: Well, I would agree with this
23 statement. And where we are going with respect to
24 underseepage criteria, DWR did put out a draft policy for
25 review and comment by the Corps of Engineers and a number

1 of reclamation districts. So we're waiting for the
2 comments to come in on that. And it has specifics on that
3 about how one would estimate the 100-year or the 200-year
4 water surface, add a foot for climate change and other
5 hydrologic uncertainty and then add the typical three
6 feet. And in addition, do a separate trip regarding top
7 of levee.

8 With respect to what I see here though, I don't
9 see a problem. We have seen seepage analyzes and our
10 division of engineering has reviewed seepage analyzes
11 submitted by Three Rivers for the project. And the exit
12 gradients are acceptable. And even at the top of the
13 levee, the worst case found was a .15 exit gradient.

14 VICE PRESIDENT HODGKINS: Thank you.

15 PRESIDENT CARTER: If there aren't any more
16 questions for Mr. Mayer, I would like to invite members of
17 the public to address us. Thank you very much, Mr. Mayer.

18 MR. MAYER: You're welcome.

19 PRESIDENT CARTER: Mr. Eres?

20 MR. ERES: Good afternoon, President Carter and
21 Members of the Board.

22 My name is Tom Eres. I represent Hoffman Ranch's
23 legal counsel. We've been before you many times as we've
24 monitored this project as it's working its way through.
25 Sitting through the process, two admonitions my father

1 used to tell me come to mind: One, if your life's a
2 salami, don't watch it being made; and number two, haste
3 makes waste. And I'm a little concerned about that.

4 I think there are a couple things that are very
5 important. One, LE funding is not going away. It's bond
6 money. How they go about managing it is a separate issue.

7 I think a comment was made earlier that the
8 governor is very concerned with protection of the urban
9 areas with flood protection. I think that's very well
10 taken. But I think it's also important to know that the
11 governor is interested in this entire process, if you will
12 explore it being completely reengineered. And so the idea
13 that somehow we have to move things quickly before that
14 reengineering gets started, I think, is inappropriate and
15 not in the spirit and intent that the governor had in mind
16 when that calls for the reengineering of this project.

17 I've also suggested that the Board has committed
18 itself to a process. I'm going to analogize that to a
19 rule of law. And that process was debated over some
20 period of time and it was agreed to. And it was for the
21 protection of what I'm going to call for very serious
22 stakeholders -- obviously the Board members, that's you;
23 obviously your staff, very critical; and the public; and I
24 put last the applicant. And I put that in that priority.

25 Sitting back and looking at the comments or

1 hearing the comments this morning, I am amazed that we
2 would hear things from staff that would say that the Corps
3 of Engineers' letter is inadequate. That is their
4 professional judgment, that they're inadequate plans and
5 specifications at this time before your staff; that it's
6 incomplete environmental work that's been done at this
7 stage of the game.

8 And I would caution you against the idea of
9 playing this responsible agency/lead agency game. You can
10 defer as responsible agency to a lead agency with respect
11 to a certified EIR. But that does not discharge the
12 independent responsibility that you have as a Board to
13 make it an independent judgment with respect to the
14 environmental issues as it relates to your jurisdiction.
15 And whether you choose to convert that to a lead agency
16 status later on is a different issue.

17 I also am still unclear whether or not there
18 actually has been an adequate systemwide hydraulic
19 analysis systemwide. You know, that's been one of my
20 favorite questions, and that is, are we really looking at
21 all of these projects, these major ones in particular,
22 from a systemwide standpoint?

23 And you know we had ongoing concerns with the 408
24 process. We were one of the early ones that said you have
25 to follow it. We were very pleased when the Board

1 acknowledged the fact that it's the 900-pound gorilla
2 nobody wanted to recognize. But it's here. You have to
3 do it.

4 We are dealing with the Corps. We do believe that
5 NEPA requirement is going to be imposed. We suspect and
6 we are urging that it be a full EIS and not just simply an
7 environmental assessment.

8 But I guess more importantly, as I sum up here,
9 the idea that we would be hearing this morning from your
10 staff to say that because those processes and procedures
11 were not followed, we have no staff report. We have no
12 permit, no actual document permit. That is, that the
13 public can look at where you can see the conditions, find
14 out which ones are standard and which ones are not. The
15 public doesn't have that. And we have no staff
16 recommendation.

17 A highly qualified professional staff that, in
18 many cases, were receiving accolades yesterday in terms of
19 from this Board. The recommendation I got from the Board
20 was really from your general manager and from your chief
21 engineer. Stop. Pause. Put this thing aside for a
22 minute. You are not ready to take action on this today at
23 their request.

24 And everybody recognized that the applicant would
25 come forward and very articulate, as Scott always is, is

1 lay out the fact that we can parse away all these issues,
2 folks. We can make it happen. Well, that's true.
3 Sometimes ends do justify the means. But it's not the
4 rule of law, and it's not the processes that you have all
5 signed up to.

6 I was also pressed with the notion that there was
7 some concern that maybe Board involvement is undercutting
8 staff or the integrity of staff and the value of staff
9 from the general manager on down to chief engineer and all
10 the other staff. I think that's very worrisome. And I
11 would hope that that has not affected this process with
12 respect to this particular permit at this time.

13 And I would question whether or not in light of
14 the rules dealing with ex parte communications, I hope
15 those haven't been implicated by the fact that there's
16 been zealous advocacy with respect to the Three Rivers in
17 trying to get their project through. But when you hear
18 that in that advocacy, there is an attitude from some
19 Board members that would indicate that they are very
20 directly involved in the processing of this application.
21 And I hope and trust that that has not hit any trip wires
22 there.

23 I noticed one of the Board members was talking
24 about cost. When there's a huge delay, there's cost.
25 Well yes, but haste makes waste. There's a cost too. I'm

1 not suggesting anything. But, you know, when you make a
2 decision, the idea is to retain it as it gets collaterally
3 challenged in whatever forms that might take, and that is
4 a form of cost of both time and in terms of resources.

5 And I would simply close by saying, you know,
6 there were comments made that you could use your
7 independent judgment as Board members. That's true. Your
8 independent judgment should be on the basis of substantial
9 evidence based upon the whole record. And if the whole
10 record is not available to you, it's a little difficult to
11 see whether or not that independent judgment can be
12 exercised.

13 And I would suggest without your staff involvement
14 that you do not have the entire record in front of you and
15 you are not in a position where you can exercise truly
16 independent judgment.

17 You can listen to the advocate and you can listen
18 to the Department of Water Resources and you can listen to
19 the Corps of Engineers, but they are not substitutes for
20 your staff. And so I recommend you take your staff
21 recommendation and put this over.

22 Thank you very much, Mr. President.

23 PRESIDENT CARTER: Thank you.

24 Mr. Foley and then Mr. Hampton.

25 MR. FOLEY: Thank you. Tom Foley. Yuba City.

1 Good afternoon, President Carter and good afternoon,
2 Board.

3 First I would like to say to Mr. Morgan, who's
4 leaving the Board, and Mr -- the chief engineer, Mr.
5 Bradley, is leaving the Board. And I've been to many,
6 many Board meetings since '04. I watched them work. They
7 are first class, highly professional public employees.
8 And I've watched. I'm the public. I've seen them work
9 very good. I am glad they are here and I'm glad that they
10 are an employee of the public.

11 That brings up a point. Highly professional
12 employees, first class -- Jay Punia, Steve Bradley. Steve
13 Bradley's going to be in charge of the State Plan of Flood
14 Control, designing it. You could not have more highly
15 qualified people advising you. From what is occurring
16 here today, my recommendation is, why do we need the
17 staff. You're ignoring your staff and listening to Scott
18 Shapiro.

19 Why are we paying the salaries of these people?
20 Why are we paying these highly professional people? Why
21 are we paying their salaries if their professionalism is
22 ignored? You don't even them. Let Scott Shapiro do your
23 staff findings. Let Scott Shapiro do the work for you.
24 That's what's being done here.

25 And another issue about the money. There is no

1 tie-in between a permit and the funding. You've heard
2 that. There is no construction without a permit. The
3 funding can be released. And you must ask DWR today. Ask
4 DWR, is there funding being released before a 408 permit?
5 The money question is moot. That is a construction
6 permit.

7 They will continue -- you heard Mr. Mayer say, the
8 funding does not depend on the permit. And you must ask
9 DWR here today this is a very important issue on this time
10 and money is, will DWR issue money -- the same thing
11 without a 408. The 408 is not going to be every month.
12 There's no tying of the money. That's the only issue.
13 And I think you've discussed it with Scott Shapiro many,
14 many times. Scott Shapiro misleads the Board. There is
15 no tie-in there.

16 And I would like to reiterate what a member of the
17 public of this audience -- except for Rose Marie, the
18 Board has a blatant disregard for public interest and for
19 public safety.

20 Thank you.

21 PRESIDENT CARTER: Thank you.

22 MEMBER BROWN: Mr. Chairman?

23 PRESIDENT CARTER: Thank you.

24 MEMBER BROWN: There's no question about our staff
25 being highly skilled. I think we accept that. But on the

1 other hand, you ask -- if what you say is true, we accept
2 their recommendations, it begs the question, why have a
3 Board?

4 And I think the Board is here to not only
5 understand the technical ramifications to a project, but
6 also the financial and political. And that's in short
7 response to the professionalism of the staff without
8 putting that in the question. But it also begs the
9 difference between having a Board that runs an
10 organization and/or having a department that runs it.

11 And for whatever reason, the administrative
12 administration and others preceding it have felt the
13 necessity of having a Board to evaluate the evidence
14 produced by staff and then evidence produced by other
15 interested parties.

16 I think you will find it's a very fair forum to
17 work with, Mr. Chairman.

18 PRESIDENT CARTER: Thank you.

19 Mr. Hampton? Good afternoon.

20 MR. HAMPTON: Good afternoon, President Carter.

21 My name is Bill Hampton. I'm general manager of
22 Levee District 1 in Yuba City. And I'm not here to make
23 any recommendations to you either way, but I'm here to
24 tell you that Levee District 1 is fully behind the setback
25 levee that TRLIA is trying to build over there.

1 And if you really look at the maps and how much
2 that's going to lower the water level up the Feather
3 River, you will see that Yuba City side gets just nearly
4 as much protection from that as the side on Yuba County
5 does. So we're all behind it.

6 I know the frustration right now that's going
7 through the staff. I know the frustration that's going
8 through TRLIA being here, because we've been here before,
9 and we'll probably be here again.

10 But just please consider it.

11 Thank you.

12 PRESIDENT CARTER: Thank you. I don't have any
13 other cards. Any other member of the public that didn't
14 get a card in that wishes to comment on this particular
15 permit?

16 Very good.

17 What's the pleasure of the Board at this point?

18 VICE PRESIDENT HODGKINS: I have one more
19 question.

20 Once again, is Rod still here? Rod?

21 Apparently, I heard something contrary to what
22 Mr. Foley heard. I want to understand whether or not it
23 is possible that DWR will advance money for the
24 construction of this project before a 408 approval is
25 granted to assist TRLIA in right-of-way acquisition and

1 other functions. Can you answer that question for me?

2 MR. QUALLEY: George Qualley with the Division of
3 Flood Management.

4 Well, the way the flooding agreements are being
5 set up is that the projects are being -- one of the things
6 that has to be done in the process is to have a project
7 management plan or a plan that describes the whole
8 project. And projects will be defined by project
9 elements.

10 Is this on? Can you hear me?

11 And there will be project elements that the
12 projects are divided up into, recognizing that some
13 projects are going to be done in phases. And no funding
14 will flow from the funding agreement until all permits are
15 in place with respect to a particular element of the
16 project that's being funded.

17 So with respect to the 408 agreement, I think that
18 the idea is that it will probably be anticipated in the
19 February, March time frame that the 408 agreement could
20 anticipate approval. And quite honestly, with the
21 schedule that we're looking at, it's probably ambitious to
22 think they will approximate executed, you know, maybe mid
23 January, maybe late January. And then it has to be
24 approved by DGS.

25 So the funds wouldn't be flowing from the

1 agreement until the beginning of March anyway. So the
2 timing probably lines up about right as far as land -- you
3 know, whether or not the agreements would be in a position
4 or funding could flow or when the 408 agreement would be
5 in place. So it shouldn't be an issue.

6 But, yes, that would be our expectation. The 408
7 agreement would be in place before funding as well.

8 MEMBER BURROUGHS: Mr. President?

9 PRESIDENT CARTER: Yes. Go ahead.

10 MEMBER BURROUGHS: I don't have a question. But I
11 would like to make a motion if there's any other
12 questions.

13 PRESIDENT CARTER: Are there any more questions
14 for Mr. Qualley? I have one.

15 MEMBER RIE: I have a comment and maybe Jim
16 Sandner needs to come back up and qualify. But the 408 is
17 not a separate permit that the Corps issued. 408 is us,
18 the Rec Board, asking the Corps if they could make
19 determination whether we can go forward with our permit.
20 So we're the ones who actually issue the permit. It's not
21 the Corps issuing a permit. They're our partner. So it's
22 essentially their permission to allow us to give the
23 permit.

24 So correct me if I'm wrong, Mr. Sandner, but I
25 believe 408 is not going to be a separate permit that's

1 coming in March. It's simply one of the requirements of
2 the Rec Board's permit that we must have the permission
3 from the chief of engineers in place before construction
4 can begin.

5 And Mr. Sandner is nodding his head that I am
6 correct, for the record. So there is no separate permit
7 coming in March that's called 408.

8 MR. QUALLEY: And then with -- with the 408
9 approval, then -- and also with our completion of the
10 final inspection and then the elements of the permit
11 could -- you know, could be approved with the delegation
12 of the general manager and with -- after the approval of
13 the staff. Because, obviously, the Rec Board permit is
14 one of the key permits that needs to be in place for the
15 work to go forward. So it is consistent.

16 MEMBER RIE: Okay.

17 PRESIDENT CARTER: Mr. Qualley, notwithstanding
18 other concerns with our process and the changes that we're
19 going through in the new year, if this Board were to delay
20 its decision or defer its decision to, say, a January
21 meeting, would that delay the release of the funding by --
22 from the 1E bonds to the project and to the applicant?

23 MR. QUALLEY: As a practical matter from the Prop
24 1E funds, it probably wouldn't -- probably wouldn't
25 matter. I know the trouble is in other matters as far as

1 their cash flow. And I think there are other implications
2 of their cash flow. But there wouldn't be any funds
3 flowing from the actual agreement until it was executed
4 and approved by DGS.

5 PRESIDENT CARTER: Okay. Which is after, say, our
6 January Board meeting?

7 MR. QUALLEY: Yes.

8 PRESIDENT CARTER: Okay. All right.

9 Rose Marie?

10 MEMBER BURROUGHS: I didn't want to -- I am ready
11 to make my motion if there are no other questions.

12 PRESIDENT CARTER: Is there any more -- are there
13 any more questions for staff?

14 Great.

15 Go ahead.

16 MEMBER BURROUGHS: I move that we put this on the
17 agenda for January in lieu of the comments that we heard
18 today.

19 PRESIDENT CARTER: We have a motion before us to
20 table this item until January for consideration of the
21 Board.

22 Is there a second?

23 Seeing no second, a motion dies.

24 VICE PRESIDENT HODGKINS: I'm going to move --
25 here's where I am in my motion. I appreciate what has

1 been, I think, a very informative discussion here between
2 the Board and our staff and DWR and the Corps and the
3 applicant.

4 I'm going to move that we approve the resolution
5 that has been prepared by Scott with the exception of the
6 issuance of a permit. I would like to change to
7 authorizing the general manager to issue the permit when
8 he's satisfied that the plans are complete enough for a
9 technical determination in conjunction with DWR, that the
10 project will perform as it has been presented to the
11 Board.

12 So it is purely technical matters that are not
13 going to be able to be determined until those plans and
14 specs are done that I am delegating to the general
15 manager. And while you may think we're all experts up
16 here and we look over those plans and specs very
17 carefully, I'm going to disappoint you and tell you, we do
18 not. We totally depend on a very good technical staff of
19 our own and in the Department of Water Resources.

20 So that's my motion.

21 PRESIDENT CARTER: Okay. Does everybody
22 understand the motion?

23 Is there a second?

24 MEMBER BROWN: I will second.

25 PRESIDENT CARTER: We have a second.

1 Any discussion?

2 MEMBER RIE: I was just wondering if someone would
3 repeat the motion.

4 VICE PRESIDENT HODGKINS: The motion is to approve
5 the resolution drafted by Mr. Shapiro with the exception
6 of the paragraph 5, where I would like the wording added
7 "that based on the foregoing, the Reclamation Board hereby
8 approves issuance by the general manager of an
9 encroachment permit and all activities and actions
10 necessary to issue and implement the approval upon receipt
11 of plans which are complete enough for him to determine
12 that the project will function as described to the Board."

13 PRESIDENT CARTER: Upon receipt of those plans or
14 upon review?

15 VICE PRESIDENT HODGKINS: Upon review. I'm sorry.
16 Upon review.

17 PRESIDENT CARTER: Subject to a technical review
18 and determination that those plans are adequate to -- and
19 to protect the system?

20 VICE PRESIDENT HODGKINS: Well, that the project
21 design will perform as designed here.

22 And that simply means that to the best of
23 everybody in the technical world's knowledge, we have
24 designed this project so that underseepage is being
25 addressed. The levees are appropriate in section

1 stability. And all of the technical staff that you folks
2 deal with are smarter. Technical staff and DWR and the
3 Corps and applicant deal with this all the time. No
4 policy issues. If policy issues come up, bring it back.

5 PRESIDENT CARTER: Does everybody understand the
6 motion?

7 MEMBER BROWN: Mr. Chairman?

8 PRESIDENT CARTER: Yes.

9 MEMBER BROWN: Is there a need also for DWR or the
10 Corps or the 408 to be involved in that?

11 VICE PRESIDENT HODGKINS: I'm reluctant to involve
12 the Corps specifically because I think the Corps has
13 difficulty making any specific determinations until they
14 get a decision on 408 from their highest management.

15 MEMBER BROWN: Okay.

16 PRESIDENT CARTER: But do -- there was a
17 discussion with regard to adding a condition in here that
18 specifically states that no construction will be begun or
19 take place until 408 approval has been received.

20 VICE PRESIDENT HODGKINS: I'm supportive of that
21 as an amendment.

22 MEMBER BROWN: That's what I was referring to.

23 VICE PRESIDENT HODGKINS: Somebody's going to kick
24 me for responding --

25 MEMBER RIE: We need to include the Corps'

1 conditions.

2 VICE PRESIDENT HODGKINS: And the Corps'
3 conditions.

4 So let's try and restate it.

5 PRESIDENT CARTER: The permit will include the
6 proposed conditions?

7 VICE PRESIDENT HODGKINS: Yes.

8 MEMBER BROWN: I second that.

9 PRESIDENT CARTER: There's a motion and a second.
10 The motion is to approve the resolution as drafted
11 with the exception of changing condition 5, which
12 authorizes the general manager to issue the permit upon
13 receipt of sufficient plans and specifications to make a
14 technical determination that the project will perform as
15 designed and as represented.

16 Okay. Any discussion?

17 MEMBER SUAREZ: If I may, Mr. President. I
18 actually have a suggestion and a question. And I will
19 start with the suggestion. I think it would be helpful if
20 our counsel, together with us, perhaps go through the
21 resolution to make sure that we understand each point that
22 has been outlined in that resolution, the documentation
23 that's been presented to us. So that's my suggestion.

24 My question relates to one of the comments that we
25 received from the public a couple minutes ago.

1 There's a concern, which I never thought about,
2 and would welcome any opinion, or any opinion at this
3 point really, regarding legal opinion regarding the
4 public's opportunity to review the permit that we issue.
5 I never thought about that. Is that our -- the way things
6 are supposed to proceed? The public is supposed to
7 take -- have a look at the actual permit and comment on
8 it? And if that's the case, is that a condition that we
9 need to somehow be open to the -- to this resolution?
10 That's my last question.

11 LEGAL COUNSEL MORGAN: I'm not -- other than the
12 normal posting of draft permits on the Web site, if they
13 are part of the Board packet, and if somebody requests a
14 copy of draft permits if they have shown interest in the
15 projects -- neighbors of the applicants or anyone on the
16 distribution list -- people do not usually get those and
17 comment on them. But they're certainly public records and
18 they are available. They're public documents. They are
19 available if they would like them.

20 PRESIDENT CARTER: To the extent they exist.

21 LEGAL COUNSEL MORGAN: To the extent they exist.
22 While they are in draft form, they are still being
23 circulated around. And even when a draft comes to the
24 Board, the Board is free to make changes at the meeting
25 and that becomes then the permit. So the public has the

1 opportunity at the meeting to hear and learn those
2 changes.

3 Normally, the permit -- on most of the permits, a
4 lot of the conditions are standard. And it's going to be
5 project by project for especially large projects that they
6 will have a long list of detailed conditions. And even
7 those tend to be very standard and routine. There's
8 usually only a handful, maybe five, conditions that are
9 specific to the -- that project that are unique.

10 MEMBER SUAREZ: I appreciate that. I guess the
11 gentleman pointed out to us that there is no permit for
12 the public to look at right now. So I think that's a
13 valid point inasmuch as there might be some expectation
14 from the public.

15 So I don't know if it's possible. I don't know if
16 the applicant and Mr. Shapiro, if you would have made your
17 objections if the permit included a period, a 30-day
18 review period, if that permit was finalized for public
19 comment? I don't know if that's appropriate, but I think
20 it's worth taking advantage of.

21 MR. SHAPIRO: We certainly don't oppose the public
22 having a chance to take a look at the permit. My guess
23 is, is that it probably could be generated pretty soon.
24 I'm kind of looking at Jay, because it's a standard
25 permit, and then it's going to have all of the Corps'

1 language in it. And the Corps' language is going to say
2 plus whatever other conditions we later say. And so Jay,
3 if you would be able to get that posted in early January,
4 maybe a two-week review period and the general manager can
5 hear comments from people. I've received, like, four Rec
6 Board permits in the last year and they are all basically
7 the same.

8 GENERAL MANAGER PUNIA: It's a pretty standard
9 permit. We will have additional conditions as directed by
10 the staff. So it's nothing new. I think the public have
11 seen it. But we will be glad to post it if it's the
12 desire of the Board.

13 MR. SHAPIRO: I just request less than 30 days,
14 because we're trying to get things moving.

15 MEMBER RIE: And if I can just make a quick
16 comment. I know Jay probably gettings 200 e-mails a day.
17 His e-mail is jaypunia -- You guess at dot.

18 GENERAL MANAGER PUNIA: At water.ca.gov.

19 MEMBER RIE: Yeah. So any member of the public,
20 you're more than welcome to send him an e-mail and he will
21 be more than happy to respond.

22 But I know that Jay gets stacks of e-mails and he
23 provides copies of those e-mails to all the Board members.
24 I'm sure that there's stacks of them here. I know in the
25 last week Jay has probably gotten hundreds of e-mails.

1 SECRETARY DOHERTY: And he answers them too.

2 MEMBER RIE: And he answers them. So you are more
3 than welcome -- the staff is very happy to share anything
4 the public wants to review, as long as it's okay with
5 Scott Morgan. And you're welcome to comment any time.

6 PRESIDENT CARTER: We can endeavor to go through
7 this resolution and have some more public disclosure in
8 terms of exactly what is in the resolution and let the
9 Board understand that. I suggest we go ahead with that,
10 keep moving in this process.

11 VICE PRESIDENT HODGKINS: My question is on the
12 subject and review. This is a draft permit that is up for
13 review. And if there are comments, what happens?
14 That's -- I think it's important that the Board clearly
15 understand what we're saying.

16 MEMBER BURROUGHS: Well, I don't think it's very
17 clear because one of the questions that was asked is, if
18 we approve this today, would they have to come back? And
19 the answer was no, so there would not be an opportunity
20 for the public to comment.

21 MEMBER SUAREZ: I think there's a distinction. If
22 the comments were technical in nature, we know that part
23 of the mitigation is to deal with some of those technical
24 issues, if the comments deal with the substantive policy
25 question, then we know that the resolution says they have

1 to come back to us.

2 SECRETARY DOHERTY: Ms. Suarez asked if we could
3 go through this before we called for the question.

4 Could we go through this?

5 PRESIDENT CARTER: Let's go through the
6 resolution.

7 LEGAL COUNSEL MORGAN: Mr. Shapiro, could I -- if
8 you would indulge me. I would like to -- I reviewed the
9 documents you drafted. I think they are really good. I
10 think they are a lot longer than the ones we usually
11 draft, but they are very detailed. They are really good.

12 What I would like to do -- I know the Board has
13 had the EIR for a while and had the chance to review it.
14 But I would just like to go down point by point and just
15 have you touch on some of these things and allow the
16 Board, if they have any questions, to address them at this
17 time so we can make sure everyone's clear on what all
18 these issues are.

19 I'm -- let me skip over the first two under
20 findings. I'm just going to go right through the
21 findings. And I'm not going to worry about the "whereas"
22 parts.

23 But under the findings, we'll skip through A and B
24 for the moment and just go quickly down through all the
25 ones for which everything is less than significant. And

1 feel free to call on anyone who has more familiarity with
2 the EIR and if you want to have them answer these.

3 But could you describe quickly or have someone
4 describe quickly each of these at a time, beginning with
5 sensitive habitats.

6 MR. SHAPIRO: Let me also ask Ric Reinhardt and
7 Paul Brunner to be up here in case there are particular
8 points that they talk to that I can't.

9 LEGAL COUNSEL MORGAN: I will say, by the way, I
10 have not made a lot of comments about my recommendations
11 of how the law is going to be implemented in the future.
12 I think that's been a point of aggravation for current
13 Board members. My one recommendation would be with the
14 formal hearing regulations, if they are ever adopted,
15 lawyers will have to wear ties.

16 (Laughter.)

17 MR. SHAPIRO: But exempted for lawyers with the
18 same name as general counsel?

19 LEGAL COUNSEL MORGAN: I won't be the counsel
20 anymore. But someone named Virginia from your office can
21 cover that as well.

22 MR. SHAPIRO: Sensitive habitats. This speaks to
23 Clean Water Act, Section 404, Fish and Game Code, Section
24 1602.

25 And as to these, basically, because these are

1 other federal or state statutes, which themselves require
2 appropriate mitigation, there is no significant impact to
3 waters or streambed alterations. Essentially, that's
4 what's being said here.

5 LEGAL COUNSEL MORGAN: Any questions?

6 Okay. Special-status plants.

7 MR. SHAPIRO: Okay. We have taken particular
8 mitigation steps, or I should say, we will take specific
9 mitigation steps and are committed to a mitigation or
10 monitoring plan which is in Section 9 if anyone cares to
11 review it. And those steps that are in the mitigation and
12 monitoring plan assure that special-status plants will not
13 be negatively impacted. They will be appropriate buffers
14 and indeed their impact in essence be replaced and
15 restored.

16 LEGAL COUNSEL MORGAN: Any questions about that?

17 The elderberry beetle.

18 MR. SHAPIRO: The elderberry beetle, our favorite
19 insect of the day. Again, this is a protected species.
20 And because we're required to mitigate for any impact to
21 protect species, already, there's no environmental impact
22 from the effecting that species, because we're actually
23 required to create additional habitat, more than was there
24 beforehand mother.

25 LEGAL COUNSEL MORGAN: Any questions?

1 Pond approval.

2 MR. SHAPIRO: Apparently we're going to have
3 experts capturing and moving turtles. And that in
4 conjunction with surveys will render the impact less than
5 significant and will ensure that the turtles will be quite
6 safe afterwards.

7 LEGAL COUNSEL MORGAN: Any questions?

8 I have my own image of this chase, but I will --
9 Giant garter snake.

10 MR. SHAPIRO: Again, a protected species. And
11 under federal law, we're required to mitigate 408 impact
12 to that species. And as a result, mitigation are less
13 than significant.

14 LEGAL COUNSEL MORGAN: Any questions?

15 Swainson's hawk and raptors.

16 MR. SHAPIRO: Same as with the giant garter snake.
17 Any -- we will do surveys in advance, develop any buffers
18 for any nesting of Swainson's hawk that are discovered and
19 relocation of hawks potentially during certain times of
20 the year in accordance with approved Department of Fish
21 and Game techniques. And as a result, the impact will be
22 less than significant.

23 LEGAL COUNSEL MORGAN: Okay.

24 And archeological, cultural and human remain
25 resources, and then a personal favorite of mine,

1 paleontological resources during construction.

2 MR. SHAPIRO: These resources are protected and
3 mitigated to a level less than significant primarily
4 through surveys. And then in the event that any of these
5 resources are discovered, there is a stop-work order
6 that's issued so they cannot be negatively impacted. And
7 then in accordance with federal and state standards, those
8 areas are appropriately addressed.

9 SECRETARY DOHERTY: Is there an inspector on site?

10 MR. SHAPIRO: I will defer to Paul Brunner or Ric.

11 MR. BRUNNER: Part of our construction project
12 will be inspection on the site. We do have, in fact, a
13 burial site that we're working right now to work through
14 the -- to make sure that it's protected during our
15 construction activities.

16 LEGAL COUNSEL MORGAN: Any other questions?

17 Traffic hazards during construction and emergency
18 response during construction.

19 MR. SHAPIRO: That has two elements. First is
20 that there is an adopted traffic safety plan which
21 addresses circulation to make sure that at all times
22 emergency vehicles can get to all the areas, that they are
23 not blocked by road closures or structures being in the
24 away.

25 In addition, we'll be going in and cleaning up mud

1 and any other debris every 24 hours to make sure that the
2 impact is less than significant.

3 LEGAL COUNSEL MORGAN: And I jumped over one of
4 the ones that was less than significant. It was temporary
5 water quality and fish impacts during construction.

6 MR. SHAPIRO: Oh. Letter --

7 LEGAL COUNSEL MORGAN: -- b. I'm sorry.

8 MR. SHAPIRO: Again, in Section Tab 9 of your
9 binder, it includes not only Three Rivers resolution as
10 well, it also includes the mitigation and monitoring plan.
11 And that mitigation and monitoring plan includes various
12 BMPs, or best management practices, which are accepted in
13 the industries, and those result in the impacts being less
14 than significant. Those BMPs are commonly reviewed and
15 used in the industry.

16 LEGAL COUNSEL MORGAN: Any questions about that?

17 All right. Moving along to the ones that are not
18 mitigated below significant, we have farmland diversion
19 air quality during construction and noise during
20 construction.

21 Can you take them one at a time?

22 MR. SHAPIRO: As to each of those, Three Rivers'
23 board ultimately adopted a statement of overriding
24 consideration where the Three Rivers board balanced the
25 potential impacts to the environment from each of those

1 three things and ultimately concluded that in the balance,
2 the budget going forward was more important.

3 Breaking them down individually, they are
4 actually, in my view, as a non-CEQA expert, they are not
5 as significant as they might initially seem. And perhaps
6 I can explain that to the Board.

7 Farmland conversion, the EIR was prepared assuming
8 that half of the land would immediately go into some sort
9 of mitigation or restoration activity. And thus, there
10 would be the loss of up to 800 acres of land plus the
11 setback levee footprint which itself is over 200 acres for
12 easements and adjoining the levee. And that would be a
13 potentially significant impact and we acknowledged it was
14 so.

15 Since that time, the Three Rivers board has
16 adopted a resolution. As I said earlier, imploring staff
17 to take all actions appropriate to keep that land in
18 agriculture so long as it doesn't risk flood protection.
19 I know this Board has stated a very similar interest, and
20 this Board will ultimately have control once the land is
21 owned by the Sacramento-San Joaquin Drainage District.

22 So we do think that this is an impact that's
23 potentially significant and, as such, should be
24 overridden. However, we do want to note that the impact
25 itself is somewhat mitigated by the Three Rivers

1 resolution and by this Board's own interest.

2 The second would be the issue of air quality
3 during construction. This particular area in Yuba County
4 is actually -- is not in any federal nonattainment
5 criteria. What that means is there are no federal
6 concerns for air quality. But under the state standards,
7 there could be concerns for air quality. Air quality is
8 exactly what you might expect. It's trucks moving soil.
9 And those trucks generate emissions and so there is a
10 potential for air quality concerns here. And thus, that's
11 why the statement of overriding consideration was done.

12 The third and final is noise during construction.
13 It's exactly what you might expect. There is equipment
14 running from 6:00 a.m. to 10:00 p.m. potentially, and that
15 can generate noise. What we discovered after we certified
16 the EIR is that the county ordinance, which is the
17 relevant standard for whether noise is significant or not,
18 actually allows construction work to proceed without any
19 decibel levels, and in the nighttime without decibel
20 levels without a proper permit.

21 And so in our view, in retrospect, this is not as
22 significant a concern. But in the abundance of safety, we
23 would encourage you to do a statement of overriding
24 consideration.

25 In sum, what you'd be saying is as to these three

1 impacts -- farmland conversion, air quality during
2 construction, and noise during construction -- that the
3 potential impacts to the environment of those three things
4 are appropriately overridden in light of the benefits of
5 the project.

6 LEGAL COUNSEL MORGAN: Could you or someone
7 perhaps give us sort of some numbers for this. How much
8 in the worst case scenario are we looking at for ag
9 conversion? I realize it may be much less than the worst
10 case. But do you have some idea of those numbers?

11 MR. SHAPIRO: Yeah. The potential worst case
12 scenario would be a hundred percent of the setback area
13 being lost as farmland plus the footprint, and that total
14 is about 1800 acres, about 1850 acres.

15 And to do a comparison, Yuba County has active
16 farmland now of 40,000 acres. It's my recollection, but I
17 certainly wouldn't want you to rely on that number. Just
18 to give you a comparison.

19 LEGAL COUNSEL MORGAN: And for the air and the
20 noise, do you have some way of addressing that numerically
21 also? Just how much air particulates?

22 MR. SHAPIRO: Let's do the noise first because
23 it's a little easier. The EIR stated that there were no
24 significant impacts from noise from the daytime
25 construction because there's no ordinance that sets any

1 limit. So the issues in the EIR were, in the event of
2 nighttime construction after the hours of 10:00 p.m.,
3 before the hours of 6:00 a.m., there could be impact from
4 the noise. I don't have a decibel number for you.

5 Again, since that time, we discovered that the
6 permit allows it and there also aren't that many sensitive
7 receptors out there. There aren't that many homes out
8 there, for example.

9 I don't know if Paul has any numbers on noise.

10 LEGAL COUNSEL MORGAN: And air? Same question.

11 MR. SHAPIRO: Scott, I can't give you a particular
12 number on air quality other than to refer you to the
13 summary of impacts and mitigation measures that's
14 contained in the mitigation and monitoring plan and to
15 refer any Board members who have particular questions
16 about air quality to that.

17 LEGAL COUNSEL MORGAN: But it is in the EIR?

18 MR. SHAPIRO: Yeah. It is in the EIR extensively.
19 The document will certify they're not challenged.

20 LEGAL COUNSEL MORGAN: Any questions to these
21 issues?

22 The one final thing I handed you with hydraulic
23 impacts, which is not one of the matters listed in this
24 resolution specifically -- and I just wanted the -- and I
25 know you had talked about the various reports and memos on

1 your slide show, which leaves a copy of that file so we
2 can include it in our record. But it's page 14, I believe
3 has a bulletin list of various hydraulic impact report
4 chronology.

5 And also, I know you mentioned the Tab 8 has a
6 summary of the hydraulic impacts. And specifically, you
7 had also shown another graph, which I don't want you to
8 necessarily forward to, but it had the worst adverse
9 impact, which was in some small amount, in a relatively
10 small amount. But importantly, you had -- there's a
11 couple of things I was hoping to get to.

12 Our staff, if they are aware of these reports and
13 have reviewed these reports, to comment on them when you
14 are finished, to suggest whether they feel that these
15 impacts are significant or whether they can express an
16 opinion. I'm not going to put them on the spot if they
17 are not ready to do that.

18 But you also had mentioned that you had letters of
19 support from people upstream, downstream, and across
20 stream as well for this in light of these hydraulic
21 impacts. I would like you to describe the nature of these
22 letters, what they were specifically saying, and what it
23 was based on.

24 MR. SHAPIRO: Sure. A few points on what you
25 said.

1 The hydraulic modeling that we've done shows that
2 there are reductions in water surface elevation of
3 anywhere from 0 to almost 3 feet in different sections of
4 the river. There is one minor spot downstream of the
5 setback levee where there is a .1-foot increase for a
6 small reach. That's as a result of levee model showing
7 water through the choke point, and that levels back down
8 again as a result of the way the system is operated.

9 We do have letters of support from SAFCA down
10 stream, LD1 across the way, and Yuba City and Sutter
11 County above. I don't have copies of those with me, but
12 they certainly are in the Reclamation Board record. We
13 submitted them to the Board in the past.

14 We concluded that the .1-foot increase downstream
15 was a less than significant impact. I would argue and I
16 firmly believe that your staff has in essence concluded
17 the same thing, because in sending the 408 letter to the
18 Corps, your staff has said that this project is not
19 detrimental to the flood control system. And in doing so,
20 your staff had the hydrology report before your staff and
21 had reviewed it. As you noted from slide 14, you had a
22 dialogue with your staff and made changes to the hydraulic
23 report to satisfy their concerns. That report in its most
24 final form is in Tab 8.

25 I will just ask if Ric Reinhardt wants to add

1 anything before we ask your staff for their comments.

2 PRESIDENT CARTER: And this has already been part
3 of this record. And it was testified before today. I
4 would like to -- for the sake of expedience let's move on.

5 MEMBER BROWN: Well, unless there's a legal
6 matter, Mr. Chairman, I concur with you.

7 MEMBER RIE: Just real quick. Mitigation
8 monitoring plan says, "No mitigation is required for the
9 changes in flood hydrology," and it does say that the
10 impact would be less than significant.

11 LEGAL COUNSEL MORGAN: I'm just trying to make
12 sure that because this resolution was not prepared by the
13 Board staff on behalf of the applicant, I would like to
14 make sure that we go point by point down through all these
15 and discussing and giving the Board members the chance to
16 ask questions and making sure that there's a review, a
17 very quick review. And I appreciate that we're kind of
18 late on time and I don't want to drag this out. But --

19 MEMBER BURROUGHS: It doesn't matter. If I may
20 make one comment. It doesn't matter about the time. It's
21 about doing it right. And if we need to do it right, do
22 it right now. And if the Board voted that they want to
23 hear it now, we can take the time to do it right.

24 Thank you.

25 SECRETARY DOHERTY: And why are we having the

1 applicant do it when we should be doing it?

2 LEGAL COUNSEL MORGAN: Well, normally, we would
3 have -- this is something that the staff would prepare.
4 Staff had -- we had one environmental specialist who was
5 asked to review three EIRs simultaneously and was unable
6 to prepare findings for this one.

7 PRESIDENT CARTER: I think the process is fine.
8 Let's just not be repetitive.

9 LEGAL COUNSEL MORGAN: Okay.

10 MR. SHAPIRO: We have nothing to add. We
11 previously presented hydrology.

12 MEMBER RIE: Did we read all the findings?

13 MR. SHAPIRO: Yes.

14 PRESIDENT CARTER: Let's let Mr. Morgan finish.

15 LEGAL COUNSEL MORGAN: I wanted to give staff and,
16 frankly, I wanted to give -- if the public had any
17 comments on this issue, I would like to give them a chance
18 to comment just on this aspect of the discussion. But if
19 staff has any comments on the hydraulic impacts. And
20 understand, what I'm asking about, is the adequacy for
21 CEQA purposes, if it's adequate for the permitting
22 purposes too, that's fine. But it doesn't have to be. I
23 am specifically interested in its adequacy for CEQA
24 purposes.

25 MEMBER SUAREZ: Is that a legal question, Scott?

1 LEGAL COUNSEL MORGAN: I'm asking the staff if
2 they reviewed the hydraulic reports. And if they are --
3 if they are more or less in concurrence with the applicant
4 that this is not a significant impact.

5 MEMBER SUAREZ: Okay. So let me ask it this way.
6 Did we provide comments through the EIR, through the
7 environmental process, raising that issue?

8 CHIEF ENGINEER BRADLEY: There were comments made
9 by our CEQA representative, and I did not see those.

10 MEMBER SUAREZ: So the answer is, yes, we provided
11 comments through the CEQA process?

12 CHIEF ENGINEER BRADLEY: We did. I don't know
13 what they consisted of though.

14 MEMBER BROWN: I wonder, Mr. Chairman, if we have
15 covered this by requiring our -- the executive officers to
16 view the conditions as appropriate.

17 LEGAL COUNSEL MORGAN: This is only for the CEQA
18 findings, which are not delegated. The board would
19 then -- my understanding of the motion was to delegate to
20 the general manager authority to issue a permit that
21 contained only technical issues. But this would be an
22 action of the Board itself today, right now, making the
23 CEQA findings.

24 PRESIDENT CARTER: All right.

25 LEGAL COUNSEL MORGAN: We're basically done. I

1 just wanted to know if staff has something to add to this.

2 But otherwise, I'm done with what I have.

3 PRESIDENT CARTER: Okay. Any other comments?

4 MR. SHAPIRO: Thank you for the chance to go
5 through the document.

6 PRESIDENT CARTER: Okay. So we have a motion
7 before us. If I can repeat the motion, it's to approve
8 the resolution as drafted with the change to paragraph 5
9 authorizing the general manager to issue the permit upon
10 receipt of plans that are sufficient to make a technical
11 determination that the proposed modifications of this
12 project will perform as represented and designed. Should
13 any policy issues arise, those will be referred back to
14 the Board in a public meeting and the permit will
15 continue -- will include all Corps conditions.

16 Motion and a second.

17 Any further discussion?

18 Mr. Punia, would you call the roll?

19 GENERAL MANAGER PUNIA: Board Member Emma Suarez?

20 MEMBER SUAREZ: You always start with me. It's
21 just not fair.

22 Aye.

23 GENERAL MANAGER PUNIA: Board Member Butch
24 Hodgkins?

25 VICE PRESIDENT HODGKINS: Aye.

1 GENERAL MANAGER PUNIA: Board Member Teri Rie?

2 MEMBER RIE: Aye.

3 GENERAL MANAGER PUNIA: Board Member John Brown?

4 MEMBER BROWN: Aye.

5 GENERAL MANAGER PUNIA: Board Member Rose Marie

6 Burroughs?

7 MEMBER BURROUGHS: Adamantly, no.

8 GENERAL MANAGER PUNIA: Board Member Lady Bug?

9 SECRETARY DOHERTY: Yes.

10 GENERAL MANAGER PUNIA: President Ben Carter?

11 PRESIDENT CARTER: Yes.

12 Motion carries.

13 Congratulations, gentlemen.

14 I do want to make one final parting comment. This

15 is not the process the Board wants to use in the future.

16 And I hope that SAFCA is listening. I hope LD1 is

17 listening. I hope San Joaquin is listening, and West

18 Sacramento. But this is not the way we want to run our

19 business. And we do not want to be put in this kind of a

20 position or situation again.

21 We will have a ten-minute recess, and we'll

22 continue with our last item on the agenda.

23 (Thereupon a break was taken in

24 proceedings.)

25 PRESIDENT CARTER: Ladies and gentlemen, if we

1 could ask you to take your seats please, we will continue
2 with the meeting.

3 We are on Item 5D, Application No. 18159-2,
4 Sacramento Area Flood Control Agency, Natomas Levee
5 Improvement Program, Natomas Cross-Canals, Sutter County.

6 Mr. Butler.

7 SENIOR ENGINEER BUTLER: Good afternoon, President
8 Carter and Board Members.

9 I'm going to present today a staff report to
10 review my findings on SAFCA's essentially two-party
11 application. There are two items that we were asked to
12 bring before the Board today that I will be making two
13 separate recommendations on.

14 Part one is for you to consider sending a 408
15 letter to the Corps, similar to the prior discussion, to
16 alter the federal flood control project levee along the
17 south or left leading downstream bank of the Natomas
18 cross-canal in Sutter County.

19 The second part of SAFCA's application was to
20 consider permit Application No. 18159-2 and ask the Board
21 to place fill and to raise and realign approximately
22 5.3 miles of the project levee and to construct
23 approximately 4.3 miles of seepage cutoff wall in the
24 project levee along the south or left bank of the
25 cross-canal in Sutter County.

1 And if constructed, this project would improve the
2 south levee of the Natomas cross-canal protecting the
3 Natomas Basin to pass a 200-year level of flood with a
4 minimum 3 feet of freeboard.

5 And I'm going to just start with a quick, just
6 very brief overview. And I'm going to turn it over to
7 representatives from SAFCA. They have a presentation that
8 describes in a bit more detail their program. This is one
9 of several phases of the Natomas Levee Improvement
10 Program. And it is the fall-on project to phase 1
11 improvements of the cross-canal which have already been
12 made.

13 Again, the applicant is SAFCA, Sacramento Area
14 Flood Control Agency, and the location is -- again, the
15 overview map. I apologize for not having a PowerPoint,
16 which is a little more stylish, but we're going to have to
17 work off my staff report since I did get some sleep last
18 night and in turn did not do the PowerPoint. But we're up
19 here in South Sutter County, the detailed map. And I
20 think SAFCA has some more nice presentation and graphics
21 for this. Again, the --

22 SECRETARY DOHERTY: Do you have the number of the
23 page?

24 SENIOR ENGINEER BUTLER: Oh, pardon me. This
25 would be on page 18 of my staff report.

1 SECRETARY DOHERTY: Thank you.

2 SENIOR ENGINEER BUTLER: Those two maps.

3 And just to reiterate to everyone in attendance
4 here today, the Board members and the applicant were given
5 a preliminary staff report last Monday. And through the
6 week I made additions to that staff report that I
7 completed late last night, and you have been given the
8 final staff report here today. There are a limited number
9 of additional hard copies here. And Monday, when we get
10 back in the office, we will place the final staff report
11 on our Web page for public downloading or viewing.

12 So why do we need to have the Board act on these
13 two issues?

14 Part one, again, alterations of the federal
15 project as proposed, which involve levee raising and
16 realignment cutoff walls, do require Corps of Engineers
17 408 approval. We discussed the 408 process sufficiently,
18 so I hope not to have to go back into it in too much
19 detail. And 408 requests must be heard by the Board.
20 They cannot be delegated to the general manager.

21 Part two, which is the permit -- I have determined
22 that based on title 23, Article 2 section 5-3, this also
23 can't be -- if you were to act on a permit, you can't
24 delegate the permit for this particular project to the
25 general manager because it is -- it has a sufficient, a

1 high level of public concern. I don't remember the exact
2 wording in the code.

3 But it is a contentious project and there's a lot
4 of debate publicly about it. And because of that, the way
5 I interpret the regulations, we don't have the ability to
6 delegate that to Mr. Punia.

7 So again, I think I've gone over the description.
8 It involves bringing an imported fill to raise some of the
9 levee, to realign the same section of the levee, to
10 provide a more stable waterside slope, and reduce the need
11 for removal of vegetation, and to construct a seepage
12 cutoff wall in the eastern 4.3 miles. Again, it's one of
13 several components of an overall comprehensive flood
14 control improvement program, and SAFCA has titled it the
15 Natomas Levee Improvement Program to ultimately get to a
16 200-year level of flood protection to the Natomas Basin.

17 And I think with that, I will turn it over to our
18 SAFCA representatives, and we will switch to their
19 presentation on more specifics and historical background
20 with respect to what this project is all about.

21 And once they are done, I will come back in.

22 MR. BASSETT: Thank you, Eric.

23 John Bassett, director of engineering for
24 Sacramento Area Flood Control Agency. I do have hard
25 copies of this that your staff will be passing out to you.

1 I do realize that it is late in the day.

2 PRESIDENT CARTER: We would appreciate you doing
3 your presentation with some alacrity, please.

4 MR. BASSETT: I met with several of your staff
5 last Wednesday, over at the Corps, discussing several
6 other issues. We have been before you several times on
7 this issue before. We also made an abbreviated
8 presentation to your Board at your October meeting.

9 SECRETARY DOHERTY: Is this a new one?

10 MR. BASSETT: I think we passed out a hydraulic
11 analysis earlier through Eric, I think. I'm not sure if
12 you have seen that.

13 MEMBER RIE: Is this it?

14 MR. BASSETT: I can't read it from here.

15 MEMBER RIE: I think you and I have the October
16 presentation. Now we have the December 1.

17 MR. BASSETT: Now you have the December 1. Very
18 similar. The hydraulic analysis that was presented in
19 October was updated. It will be run through by
20 Mr. Countryman again here.

21 PRESIDENT CARTER: Please proceed.

22 MR. BASSETT: Natomas Basin History. We're almost
23 a hundred years into flood protection in the Natomas
24 Basin. I won't go through every one of these lines except
25 that the action that is proposed today, sending the letter

1 forward to the Corps for the 408 modification of the
2 Natomas cross-canal south levee, was actually approved by
3 Congress in WRDA in 1999. And due to various reasons,
4 that process has not moved forward through the Corps'
5 process.

6 But we are choosing to move forward, which was
7 allowed under WRDA '99 and WRDA '96 by the local interests
8 more recent activities regarding underseepage and other
9 issues that were identified after the 1997 storms. The
10 risks we identified were inadequate freeboard,
11 underseepage issues, levee encroachment, channel erosion.
12 I think you have seen most of these maps before so I will
13 just go through that underseepage. Typical levee seepage
14 concerns, waterside encroachments. Nine or ten bank
15 erosion sites, which are being addressed, in part, by the
16 Sacramento River Bank Protection Project.

17 Our objectives are to get to 100 years as soon as
18 possible, provide a 200-year over time and ensure that
19 that development does not substantially increase expected
20 damages of an uncontrolled flood.

21 We had several alternatives that we looked at --
22 potential for upstream storage, systemwide improvements,
23 improved conveyance, widening the Yolo bypass by moving
24 levees, and doing other things, setting the levee back in
25 Natomas. We found that those were not permitted in this

1 particular location in the river system. Unlike TRLIA
2 with the levee setback, we would actually negatively alter
3 the hydraulics in the system. So that is why we chose to,
4 more or less, improve the levees in place. Increase
5 freeboard under seepage, addressing encroachments and
6 addressing erosion.

7 For the proposed alteration to the Natomas
8 cross-channel, we have a raise in place with a widening
9 and flattening of the levee and a cutoff wall which we
10 have constructed approximately 1 mile this past summer.
11 We'll have about 4.3 miles over the next construction
12 season.

13 Sacramento River levee was an adjacent raise levee
14 which addressed not only water side encroachments and some
15 erosion issues but also would flatten and strengthen that
16 levee.

17 We have several strategies to address habitat that
18 are impacted. I won't go through all of them. One of the
19 things that involved is connecting -- the red line that
20 you see here are new canals within the basin to connect
21 the northern population centers and the southern
22 population centers of the giant garter snake impacted
23 species. We will require strip acquisitions on several
24 properties along the levee.

25 This is along the Natomas cross-canal where, in

1 the northern section up in Sutter County, there are three
2 properties -- this property, this one, and this other one
3 here, where there are residential improvements on there.

4 We would be acquiring the residences under each of
5 these acquisitions. We would allow the residences,
6 instead of the 90 days, to relocate. That is provided in
7 California law. We are analogizing [sic] that to a
8 significant impact for a family. We are allowing them up
9 to a year to relocate after our acquisitions are
10 completed.

11 Similarly, along the Sacramento River, in the
12 northern section, each one to 4.B, there are two
13 residential properties up in the Reach 2 area where,
14 again, due to the adjacent levee, we are having to acquire
15 those residences and we will similarly give those property
16 owners up to a year to relocate, which is longer than the
17 statute requires.

18 We have phased the project. Again, the phase 1
19 was the work we did on the cross-channel this past summer.
20 The orange line would give us the phase 2 for the
21 cross-canal; phase 1 for the Sacramento River. And some
22 canal relocations, the blue is the '09 work, both levee
23 improvements and canal relocations. And the green would
24 be the 2010 work of, in this case, mainly levee
25 improvements at that time.

1 And we have addressed those at both a programmatic
2 analysis for CEQA and a project level analysis for CEQA.

3 Additionally, environmental analysis that we have
4 been conducted is assuming that you do send forward the
5 408 request letter. But in addition to our already having
6 made a 404 application to fill wetlands, the Corps has
7 begun their EIS process. And their first scoping meeting
8 is set for, I believe, January 9th in 2008 and will follow
9 through the spring and summer with the completion of that
10 environmental impact statement. And then in the later
11 part of 2008, we'll actually begin a joint EIR/EIS for the
12 2009/2010 phases.

13 One of the significant impacts that we --
14 potentially significant impacts that we looked at was
15 hydraulic impacts on the Natomas Levee Improvement
16 Program.

17 And at this point, I'm going to turn it over to
18 Joe Countryman who will go through these slides and
19 explain how MBK conducted the analysis.

20 MR. COUNTRYMAN: Good afternoon. Joe Countryman,
21 president of MBK Engineers.

22 Some of these slides should look familiar because
23 I gave you a very rapid run through when we were in Yuba
24 City.

25 So at any time if, you know, I'm being too

1 repetitive, let me know. We don't need to go through
2 every slide if we don't need them. But I'm assuming right
3 now, I do need to go through these slides.

4 The Sacramento River Flood Control Project was not
5 designed based on a flow frequency or anything like that.
6 It was based on specific design flows, water levels, and
7 freeboard -- minimum freeboard, not maximum freeboard. So
8 the system was put together that way. No place in the
9 system is anyone's protection dependent upon a levee
10 failure. The system was designed assuming no levee
11 failures. Very, very clear.

12 And the big thing was the bypasses were included
13 in the project to handle the much greater than normal
14 flows, and that's the system that we have. That's how it
15 was designed, and that's how it's operated very
16 effectively.

17 In our particular area, we have maybe one of the
18 most complex hydraulic areas in the country. We have the
19 Sacramento River running from the cross-canal down to the
20 American River. We have the American River. We have the
21 Sacramento bypass that's discharging water away from the
22 area to the Yolo bypass. And most importantly, we have
23 the Fremont Weir taking about five times the flow during
24 these major floods coming from the north, adds what's
25 going in the Sacramento River.

1 And then of course the cross-channel collecting
2 runoff from all of this vast area, all the way up to
3 Lincoln and Roseville, it's collected and taken through
4 the cross-canal through the Sacramento River. This is the
5 system that is existing, as designed, authorized by
6 Congress and has been in operation. And we are not
7 changing any aspect of that.

8 Again, the project was designed based on a
9 specific flow in water surface elevation. Shown on here,
10 from the Corps adopts, is what we call the 1957 Sacramento
11 River Flood Control Project design. That's the solid
12 line. The dashed line above that represents the 3 foot of
13 freeboard specified in the legislation that authorized the
14 project.

15 If we go higher, we'll see a brown line and a
16 green line. The brown line represents the levee on the
17 Natomas side of the Sacramento River. The green line
18 represents a levee on the Yolo side or the west side of
19 the Sacramento River.

20 And as can be seen in this slide, there's
21 approximately a mile, a little over a mile, of levee on
22 the west side of the Sacramento River that is below the
23 project standard currently and substantially below the
24 levee surrounding Natomas.

25 We did all of our analysis with a hydraulic model.

1 And people have requested the model. They said it hasn't
2 had the technical review. It hasn't done this. It hasn't
3 done that. This is what the Corps of Engineers says.

4 Based on our review of the BMK model, it is
5 acceptable to use this material for your ongoing design
6 purposes for remediation work on the Natomas area levee
7 project.

8 SAFCA and Natomas Area Levee Project Report
9 indicates, "The design levee profile is based on this
10 model's 200-year water surface profile plus 3 feet. We
11 concur in the application and recommend the addition of
12 this freeboard value to the 200-year water surface profile
13 to determine the minimum top of levee."

14 So I think anyone who says this model has not had
15 a technical review and has not met standards, I have to
16 say they are incorrect.

17 Okay. What did we do with the model? We had the
18 advantage of the 1957 -- or 1997 flood, which was the
19 largest flood in the Sacramento Valley since 1860. And it
20 probably may have been larger than the 1860 flood. So we
21 had a whopper of a flood.

22 We also had a high conscious level of the flood
23 threat after 1986. So we ran out and the state ran out
24 and the Corps ran out and took a lot of high water mark
25 information during that flood. So we had a lot of data to

1 use to calibrate the model. We also had two recording
2 stream gauges. The USGS gauge here at Verona and another
3 gauge down at Sacramento. So we had reporting gauges and
4 we had high water marks to use to calibrate the model. We
5 feel we have an extraordinarily capable model.

6 So where does the Sacramento River Flood Control
7 Project design flow stack up against these historic
8 floods?

9 Well, according to this chart that we put
10 together, the Sacramento River Flood Control Project has
11 had three floods greater than what its design was set for
12 originally, and one flood in 1964 was essentially the same
13 as the design flood. So in about a hundred-year period,
14 we've had about four floods that have either equaled or
15 exceeded the 1957 design flows that the project was
16 basically designed for.

17 Now, that was before reservoirs came in place. So
18 this chart could be misleading. I want to make sure we
19 interpret this correctly. This is unregulated floor.
20 Oroville, New Bullards Bar, Black Butte, and Shasta
21 substantially altered that -- these floods and brought
22 them down very close to the design level for which the
23 project was originally designed.

24 There is a hundred-year flood stand as far as
25 levees go. The solid line is the most recent hundred-year

1 calculation that has been done. It's acceptable to FEMA.
2 And what we did with that hundred-year flood is that that
3 dotted line is the original project design top of levee.
4 That's the one that included the 3 foot of freeboard. The
5 hundred-year flood doesn't exceed that, but it comes up
6 and is equal to that.

7 So basically, the levees would not meet -- if all
8 the levees had was the top of levee designed in '57, it
9 would not meet that standard. And as far as on the west
10 side of the levee goes, where the levee doesn't even equal
11 the design level, it's far below what the hundred-year
12 would be. On the Natomas side, it's higher than that, but
13 not with 3 foot of freeboard.

14 What's the basis for the design flow? One thing
15 we had to do, because of this chart that I showed you, the
16 system was not designed for a 200-year flood. So in many
17 places upstream from Sacramento, the design level for the
18 200-year flood is exceeded. We had to make some
19 assumptions about that. To be consistent with the
20 original concept of the project, we assumed there would be
21 no levee failures. So people would be able to freely fix,
22 repair, strengthen, and do whatever was necessary to their
23 levee without impacting this design that we are putting
24 forward here.

25 It's the best estimate of the 200-year design

1 flood.

2 In other words, frequencies developed by the Corps
3 of Engineers were used that will give us what the best
4 estimate of the 200-year flood is, and that's what we
5 used, and that's what the Corps reviewed and said we used
6 basically the right numbers. And we added 3 foot of
7 freeboard to the levees which is consistent with standard
8 practice.

9 To give you an idea of what a typical cross
10 section -- this isn't typical -- but this is typical of
11 where the Natomas levee's higher and the Yolo levee is
12 lower. This is a to-scale drawing of what the river cross
13 section looks like. We can see what the Sacramento River
14 Flood Control Project designed water surface is, and what
15 is shown on here is the 200-year water surface that we're
16 using for design in blue.

17 And on the west side, colored in orange there, is
18 the deficient levee that needs to be raised just to meet
19 the existing standard, and then what the relationship of
20 the 200-year flood is to that.

21 On the left here, on the east levee, is the
22 proposed levee raise relative to the existing levee with
23 the 3 foot of freeboard.

24 Of importance, a lot of importance here, is that
25 the 200-year water surface elevation does not exceed the

1 existing top of levee for Natomas. I want to repeat that.
2 The existing top of levee for Natomas contains the
3 200-year water surface design stage. So we don't
4 affect -- by raising the levee, we do not affect spills or
5 failure by overtop.

6 There's no direct hydraulic impact. And really,
7 there's no argument about this, anybody that looks at
8 this, hydraulic engineer, because there's no work in the
9 channel. And we're not doing any work in the channel. We
10 are not moving the levees from their current alignment.

11 We can't affix the Sacramento River Flood Control
12 Profile because we're not changing the river cross
13 section. It's exactly where it is, where it belongs, and
14 we're not changing it.

15 There's no impact on the 100-year profile because
16 under existing conditions, the 100-year profile is
17 contained in the Natomas levee. There's no impact for the
18 200-year water surface profile, because the profile is
19 contained within the existing Natomas project levee.

20 This map -- or this chart demonstrates what I'm
21 talking about. The 200-year profile that we're using for
22 design is assuming that the Folsom project, which this
23 Board has authorized or has approved and is going forward
24 under construction by the Corps of Engineers, that solid
25 blue line in here, is in place. Now, we realize it might

1 be 2012 till that's in place. But until that is in place,
2 the dashed line is the controlling line for the 200-year
3 water surface.

4 So in some areas, we might not have quite the
5 freeboard that we need once the entire project is
6 complete, but we will have containment of the 200-year
7 flood.

8 Now, on this chart I'm showing you for the first
9 time where the top of levee would be that we're proposing
10 as part of the Natomas project. That's the brown line
11 with the little circles on it. And that's basically
12 3 feet higher than the blue line. So that's the area
13 where especially the residents along Garden Highway are
14 concerned, because the levee is going to be higher and
15 they have concerns about that.

16 Okay. Addressing that, does the flood risk
17 reduction for Natomas Basin increase the flood risk for
18 residences along the Garden Highway? My analysis is, it
19 does not. And one of the reasons is that I told you one
20 of the assumptions for this design profile is that when
21 levees overtop upstream of us, they don't fail. We also
22 know that's not a very realistic assumption if someone has
23 spent 40 years like I have in this flood business. We
24 know, when a levee overtops, there's a very high
25 probability that that levee will fail. It's also true for

1 this project. Our design condition is not what we expect.
2 It's the worst possible condition that we're using for
3 design.

4 It's like when a designer designs a bridge. He
5 doesn't design a bridge for the traffic he expects. He
6 designs it for the worst possible traffic that he can put
7 on there -- big rigs fully loaded back to back, all the
8 way across the bridge. That's one way we can look at
9 this.

10 MEMBER SUAREZ: I just want to make sure I
11 clarify. Is the worst condition because the assumption is
12 that nothing is failing upstream?

13 MR. COUNTRYMAN: Right. Even when the levees are
14 overtopping upstream. That's a very important
15 distinction. In other words, we're not -- we're staying
16 with the basic assumption of the project. No one should
17 depend on somebody else's failure for protection. That is
18 what we are sticking with. That's what the project
19 foresaw.

20 So what if there was failures? We took a 500-year
21 flood, a flood substantially larger than the 200-year
22 flood with massive overtopping of levees upstream of
23 Sacramento. And we let the levees fail when they were
24 overtopped. The 500-year water surface elevation would
25 drop about a foot below the 200-year design water surface

1 elevation that we had.

2 So in my view, the residences along the Garden
3 Highway have a very, very low risk of being inundated by
4 this project. Why is the 3 foot necessary, if what I'm
5 saying is true? The wind and wave runup could move water
6 over the top of the levee if we did not provide freeboard.
7 So even though for these much larger floods, we realize
8 it's going to drop the water surface elevation. We have a
9 provision in here for wind and wave. Also, it's a basic
10 FEMA federal design criteria.

11 Now, the Corps is trying to move away from a
12 freeboard criteria and they are very strongly in the
13 process of doing that. But right now, as we stand right
14 now, this is a standard that has been used for at least 50
15 years and continues to be used and operative today, the 3
16 foot of freeboard.

17 And, you know, this is just an example of the type
18 of erosion and things that can occur.

19 That's it for me. The other thing I do want to
20 say is that if the levee were to overtop and fail and
21 Natomas were to fill up with water, it would be
22 catastrophic not only for the people in Natomas but for
23 the people living along the Garden Highway, because as we
24 have seen at Jones Tracts, I think Jay and Steve can
25 testify, once you fill up that basin with water and the

1 wind starts blowing, you can lose all the roads. You can
2 lose the levees. I mean, and we're talking, you know, 20
3 something miles here that you would have to be up trying
4 to stop the erosion.

5 So this project, I believe, helps the residents
6 along the Garden Highway as well as the 70,000 people
7 inside the area.

8 Any questions?

9 SECRETARY DOHERTY: Yes. Haven't most of our
10 floods been not overtopping, but levee breaks?

11 MR. COUNTRYMAN: Yes.

12 SECRETARY DOHERTY: We don't have the wind along
13 the river in that section. And summertime, yeah, we've
14 got the boats out there but the water is down.

15 MR. COUNTRYMAN: We did an extensive wind and wave
16 analysis. And you're right, the river kind of goes like
17 this. And in some areas, there's a long wind fetch. The
18 waves do get up over two and a half feet high. But for a
19 lot of it, like you say, it's right. If the fetch isn't
20 long, then the wave heights are lower.

21 SECRETARY DOHERTY: Have there been any breaks in
22 this area due to overtopping?

23 MR. COUNTRYMAN: No. And that's the other thing.
24 I wished I had the chart with me. But for the people up
25 in Marysville and Yuba City, I prepared a chart showing

1 the levee failures that have occurred since 1955. None of
2 those levee failures occurred from overtopping. They all
3 occurred from underseepage and throughseepage, and they
4 were heavily concentrated just north of Sacramento, either
5 on the Sutter Bypass, Feather River, Yuba River, Bear
6 River.

7 So that's a point well-taken. Really the height
8 of the levee has not been an issue.

9 SECRETARY DOHERTY: Thank you.

10 PRESIDENT CARTER: Please proceed.

11 MR. BASSETT: This just shows the -- some of the
12 next steps that we need to go through to actually get to
13 construction in 2008 and then begin our work for the 2009
14 and '10. The recommendation right now is move forward a
15 section 408 permission letter. I know the permit is
16 before the Board also, and if you wish to take action on
17 that, we would be happy with that also.

18 With that, are there any questions for my
19 presentation?

20 I will turn it back over to Eric if there are
21 none.

22 PRESIDENT CARTER: Eric, go ahead.

23 SENIOR ENGINEER BUTLER: Let me just make a
24 comment that most of my work in getting to the point of
25 being able to bring a staff report to you at this meeting

1 focused on evaluating SAFCA's hydraulic analysis. I'd say
2 I probably did a 90, 95 percent review of all the various
3 hydraulic analyzes and different charts that I have looked
4 at either in draft or final EIRs and in numerous other
5 supplemental documents that SAFCA has provided.

6 And as such, there are other portions of their
7 applications, such as the construction drawings and
8 specifications, that I have only had time to do a very
9 limited initial review of. And so I want to make it clear
10 that there are certain aspects. And when we get to my
11 recommendations, it will become clear as to why I came to
12 the recommendations that I did. But I have been able to
13 do, what I feel, is a pretty thorough reevaluation of the
14 hydraulic analysis.

15 And in general, there's many things about SAFCA's
16 position that I agree with. And I want to make sure that
17 people understand how the -- some of the assumptions in
18 their analysis. And I want to bring up some other points
19 about hydraulic analysis that have been raised. So let's
20 make it really clear, first of all, that they looked at --
21 they routed, which is a modeling term, for moving a
22 simulated level of flow at the hundred-year level and at
23 the 200-year level.

24 They routed that through their model and they
25 looked at it at two different scenarios -- one, with

1 current existing conditions, and two, with the levee
2 raises that they are proposing. And they did this both
3 for the Natomas cross-canal, which is the specific issue
4 I'm bringing forward to you today, as well as the east
5 levee of the Sacramento River.

6 And in both cases, as I think we can easily see,
7 because there is no -- they are not doing any work,
8 changing the cross-sectional geometry of the channel --
9 they are not constricting it or widening it. There's no
10 difference in the computed water surface elevations at
11 both a hundred- to 200-year levels.

12 Now, we've had -- I've been able to review as
13 through their documents, through their draft EIR and
14 comments provided by citizens and other agencies and their
15 responses some concerns about hydraulic analysis. And
16 there are about six different reclamation districts.
17 These are other local maintaining agencies that are across
18 the channel from the Natomas Basin, specifically RD 1001.
19 They are on the north side of the cross channel in Sutter
20 County; and then district 1600, 1827, 785, and 537.

21 And they are on the west side of the Sacramento
22 River so they are protected by the west levee of the
23 river, and they are also between the east levee of the
24 Yolo bypass. So they are in a section -- they are in
25 basins that are bounded on both sides by levees -- the

1 Yolo bypass on one side, the Sacramento River on the
2 other.

3 And in addition to reclamation district 2035,
4 which is even further to the west, they own lands partway
5 to the bypass and partly west of the bypass towards Davis
6 and Woodland. The perception is that if you are building
7 your project to a new design level, are you not therefore
8 subjecting us to higher stages?

9 And I think this is -- this took me -- and I've
10 worked with this model for years back with the Corps over
11 a decade ago. And I feel I have a fairly good
12 understanding of hydraulic analysis. It took me a while
13 to wrap my hands around this. And I think this certainly
14 is one of the key issues that we're hearing about, that is
15 the contentious issue of what -- is there an impact to
16 residents along the Garden Highway, to west side districts
17 who are primarily in agricultural basins? And I think
18 this is very critical that we understand how this analysis
19 was carried out, what the assumptions are.

20 And as Joe mentioned, they did a very, very
21 conservative analysis by saying there are not going to be
22 any failures. It's consistent with the original design of
23 the project. Yet, in our historical experience, failures
24 are typically due to levee breaches. They are not
25 overtopping.

1 So in assuming in your modeling analysis that
2 there are no failures, you're actually saying we're going
3 to take this very, very high level of flood -- of flood
4 water and force it through the system.

5 And so again, I want to emphasize it for the
6 Natomas levees -- and Joe, correct me if I'm wrong -- for
7 the opposite bank levees, at the hundred-year and 200-year
8 elevations with or without SAFCA's project, there's no
9 difference in computed water surface elevations.

10 Now, Steve had some concerns back a few months
11 ago, in September, and asked SAFCA to do some further
12 analysis. And what I would like to discuss briefly is
13 what the intent of that was. I believe we were looking
14 at, can we quantify if there was a levee failure, where
15 would the water go? How deep would these basins flood?
16 And so what safe SAFCA did, what Joe's company did at
17 Steve's request, was to do another scenario at the -- I
18 believe at the 100 the 200. Just the 200. So they took
19 the 200-year level of flood and they first assumed that
20 both levees would fail approximately at Verona. So we're
21 just below where the Feather River flows into the
22 Sacramento River.

23 And there is -- basically to summarize this
24 quickly, catastrophic flooding occurred on both sides of
25 the levee similar to what we saw at RD 784 in 1997. The

1 numbers on the west side urban districts were on the order
2 of 15 feet, plus or minus. Obviously, very deep flooding.

3 And then the next model run, they said, okay,
4 we're going to assume that we've -- that it only floods on
5 the west side. We're going to put all the water on the
6 west side. The depths are typically a half a foot to a
7 foot higher.

8 So the argument in general, as I understand it, is
9 that if the levee breaks on both sides, you have
10 catastrophic flooding. If the levee breaks only on the
11 west side, you still have catastrophic flooding albeit
12 slightly deeper.

13 So is there a difference? And the argument is,
14 there really isn't that much of a difference there.

15 Okay?

16 So now let's take this a step further. Go back to
17 the original design of the project. It's not based on
18 levee failures. So from the challenge to the hydraulic
19 model, when you start looking at, well, what if the levee
20 failed here, what if the levee failed here, what if the
21 levee failed here, you can do a sensitivity analysis and
22 compute what these depths would be.

23 But how would you ever design based on that
24 analysis? All right.

25 Now there's one -- the additional -- I'm trying to

1 address the concerns that we are hearing all the time
2 about you're basically building -- you are increasing the
3 design of the project; aren't you? You are going from a
4 '57 design, which was based on floods in the early 1900s,
5 and you are saying, you are considering whether or not to
6 grant SAFCA the ability to increase their levees to
7 provide a 200-year level of protection.

8 And I think that's a perception that's reasonable
9 to arrive at. What we need to really consider here, as I
10 regather my thoughts, is that if the Board -- the question
11 you have to ask yourselves and discuss is, if we are
12 granting SAFCA the ability to increase their levees, and
13 we are also assuming, and this is part of SAFCA's analysis
14 as well, that current legislation that we just -- that was
15 just voted into place or just signed by the governor back
16 in October, basically the likelihood of those urban, those
17 nonurban agricultural, basins to ever be able to improve
18 their levees to 200-year level production is highly
19 unlikely.

20 So we need to look at -- we need to address their
21 conditions, but we need to have a balance between our
22 immediate goal. And we've heard about the early
23 implementation projects. We had this bond money. The
24 public has said, yes, flood protection for urban areas is
25 important. So we have this goal to implement improvements

1 to our urban areas. That's on one hand.

2 On the other hand is -- we've heard this argument.
3 You need to look at this systematically. You need to look
4 at it top to bottom throughout the entire project.

5 Well, there's also legislation that says, yeah
6 we're going to do that. The problem with that, or the
7 caveat with that is we won't be able to have that
8 completed until four years out. January 1, 2012, is the
9 actual date we're required to have that done.

10 DWR will develop and Steve will be a part of that,
11 and the Board will adopt this new State Plan of Flood
12 Control which will include a Central Valley Flood
13 Protection Plan. So we have for us kind of a dilemma of
14 balancing the need to do immediate improvements to our
15 urban areas which we now have some money to do against the
16 more long-term need to do a comprehensive basinwide
17 analysis.

18 And so if we can get our hands around the ways we
19 look at this hydraulically through our computer models and
20 help people understand it, I think we can get to that
21 balance.

22 And one thing that I -- in my review and through
23 all these different graphs and everything that I have
24 seen, what I haven't seen and what Joe says he has and he
25 can make this available -- I hope I'm not putting words in

1 your mouth yet. I would like to see and I think many
2 people would like to see all the way down to at least
3 Freeport, possibly even further south. So I'm talking
4 about both sides of the Sacramento River, including the
5 areas bound by Natomas Basin. I would like to see graphs
6 that depict the results from the same name numerical
7 model, which allow people to very clearly compare the
8 '57 design water surface elevation profile versus the
9 computed 100-year event versus the computed 200-year
10 event.

11 And I believe we're going to see -- we may find,
12 in that case we can at least quantify and then begin to
13 discuss, okay, if we turn this whole system, as it's
14 currently built, into a 100- or 200-year flood system, how
15 high will we expect design levels to increase if we had no
16 levee failure. And that's probably an initial piece of
17 what Steve and his group are going to look at when they
18 start to evaluate the system as a whole.

19 I would like to see that as part of SAFCA's
20 analysis. I would like you to be able to take a look at
21 it and would like it to be made available to the public.
22 And I believe I'm getting an initial response from SAFCA
23 that that's all entirely possible.

24 And I believe that may be a helpful tool to allow
25 people to get their hands around this whole issue of

1 hydraulic analysis and impact.

2 So let me jump to -- I want to make a couple of
3 quick statements away from hydraulic impacts now.

4 CEQA compliance --

5 MEMBER SUAREZ: I'm still not sure --

6 SENIOR ENGINEER BUTLER: And I've been thinking
7 about this for weeks.

8 MEMBER SUAREZ: I'm still not sure I've gotten to
9 your opinion regarding just on the specific issue on the
10 hydraulic information that was provided to you. And you
11 reviewed it --

12 SENIOR ENGINEER BUTLER: So how does that
13 influence my ultimate recommendations?

14 MEMBER SUAREZ: No. I want to know whether --
15 just your judgment, whether it's a valid analysis.

16 SENIOR ENGINEER BUTLER: Okay. I can do that.
17 Fine. From what I have seen so far and my knowledge of
18 the model that SAFCA is using and my prior work with that
19 model and my understanding of hydrology and flood
20 forecasting and everything else that my career has given
21 me, I am comfortable with the models used.

22 I think SAFCA's analysis is sound. I also want to
23 state that I think the perception that people have where
24 they are questioning whether downstream and west side
25 impacts have been evaluated. I think those are reasonable

1 questions to ask.

2 So specifically, to answer your question, yes, I
3 believe their methodology is good. I would like to see a
4 few more results posted and made public. Joe has stated
5 that they already made those runs and I can look at that.

6 But I think, yes, in general the analysis makes
7 sense. And while it is not easy to understand at first,
8 it can be understood. And I think it can be -- I think
9 many of these issues can be resolved. Now some of them
10 may have to be resolved as part of a longer-term
11 comprehensive plan. But, yes, I believe for right now,
12 I'm comfortable with the level of hydraulic analysis that
13 has been performed.

14 MEMBER SUAREZ: I appreciate your concern
15 regarding the public perception. And I've had some help
16 from SAFCA dealing with public perception. I just want to
17 make sure that we can stay focused on the narrow
18 particular decisions that we face today.

19 SENIOR ENGINEER BUTLER: Okay. So let me just
20 make a comment about the CEQA issues. I've been relying
21 upon -- I've done a very initial, quick, review of all of
22 the draft and final EIR outside of the hydraulic analysis
23 portions of it.

24 And I -- my intent was to rely on the DWR
25 environmental review to make findings and a notice of

1 determination so that you could adopt -- basically as I
2 understand it, so that you could adopt SAFCA's findings to
3 satisfy the CEQA process. Or alternatively, you could
4 choose to adopt your own findings. Unfortunately, due to
5 the time constraints and the fact that the person was
6 trying to make -- trying to do EIR review for three
7 projects, basically the three projects that we've
8 discussed today, the level of review that was done, I
9 feel, was not sufficient.

10 And so we're not prepared to -- I would recommend
11 we would not make any CEQA findings today. We don't need
12 to make CEQA findings on the 408 issue. We would need to
13 make CEQA findings to move forward with the permit. So I
14 have probably tipped my hand a little bit there as to
15 where I think we should end up.

16 We don't have any problems with the local agency
17 endorsement. That's a standard function of the permit.
18 RD 1000 is the levee maintaining agency specific to the
19 Natomas cross-canal portion which we're evaluating today,
20 and there -- we have a draft permit; it's all written. We
21 have Exhibit A, which is their conditions. No real
22 problems there.

23 We also have the -- basically the exact same Corps
24 letter that was discussed earlier with respect to TRLIA's
25 project. We have the same letter for our project that

1 basically says, we've looked at it, and you're okay to
2 make a conditional permit subject to 408 approval. No
3 difference there. So I hope we don't have to get into
4 another discussion with that.

5 PRESIDENT CARTER: Me too.

6 SENIOR ENGINEER BUTLER: Yeah. So --

7 MEMBER RIE: Do we have Corps comments?

8 SENIOR ENGINEER BUTLER: Yes, we do. They are
9 included as Exhibit B to the permit, which is kind of way
10 back. It's about two-thirds of the way back through
11 the -- it's the same letter dated December 11th.

12 MEMBER SUAREZ: So we do have a draft permit then?

13 SENIOR ENGINEER BUTLER: Excuse me?

14 MEMBER SUAREZ: That is a draft permit?

15 SENIOR ENGINEER BUTLER: There is a draft permit,
16 yes.

17 So basically what we're missing --

18 SECRETARY DOHERTY: So have you covered it?

19 PRESIDENT CARTER: Let's take the 408 letter
20 first.

21 SENIOR ENGINEER BUTLER: Okay. You want me to
22 make a recommendation?

23 PRESIDENT CARTER: I would love that.

24 SENIOR ENGINEER BUTLER: All right. Here we go.

25 MEMBER RIE: Before you make your recommendation,

1 can you go over the Corps' comments and any concerns they
2 have?

3 SENIOR ENGINEER BUTLER: The Corps' comments?

4 MEMBER RIE: Yes.

5 SENIOR ENGINEER BUTLER: Again, Ms. Rie, the
6 Corps' comments, as you heard Mr. Sandner speak to the
7 Corps' comments, with the respect to the prior project,
8 TRLIA's project, they are basically the same comments.
9 The Corps is saying that we have no problems with you
10 issuing a conditional permit at this time subject to 408
11 approval. And so we have -- in our draft permit we have
12 basically taken the Corps' comments, we've taken RD 1000's
13 comments, and we've rolled them in as conditions to the
14 draft permit.

15 And there were no real substantive comments from
16 the Corps other than, "You need to wait until we make 408
17 review and a decision on that."

18 MEMBER RIE: Okay. I just want to be clear.

19 So the Corps has no major concerns, no objections,
20 to issuing a draft permit? I just want to make sure we
21 understand the Corps' perspective.

22 MR. SANDNER: Once again, Jim Sandner. Sacramento
23 district, Corps of Engineers.

24 We'll be doing a full and complete review under
25 the 408 process. So again, we would not object to a

1 conditional permit that is subject to our approval under
2 the 408 process.

3 MEMBER RIE: Thank you.

4 SENIOR ENGINEER BUTLER: Before I make the
5 recommendations, let me just restate that when I say, in
6 the report, where it says "staff's opinion," well, since
7 Steve hasn't reviewed it and Jay probably has a little
8 bit, I probably could have said, "Eric's opinion," but
9 that probably wasn't grammatically too appropriate for
10 this. But these are really my own opinions.

11 I want to reiterate that overall, I think we need
12 to strike a balance between the desire to move forward
13 with locally-led improvements to the Sacramento River
14 Flood Control Project and the need for comprehensive
15 systemwide analysis and planning. Approval now or in the
16 future of either part of SAFCA's request, this request,
17 presented in this report should be done only with
18 agreement or buy-in, maybe, by federal, state, and local
19 flood protection partners that they understand that there
20 may exist potential systemwide risks associated with
21 moving forward to complete this early implementation
22 project prior to the comprehensive Central Valley Flood
23 Protection Plan and State Plan of Flood Control in place.

24 And having said that, I recognize that those are
25 the cards we're dealt with, and we're asked, how can we

1 move forward? But I think if we have that as an
2 overguiding -- overriding guideline or philosophy and we
3 don't forget that, we can go forward with some of these
4 early implementation projects.

5 So here's my request. There's one thing I want to
6 say about DWR. I wanted to give George, if he had any
7 further comments on DWR's current status of review of this
8 project with respect to their EIP application.

9 So if you don't mind, I think this is critical
10 because you asked it for the last project. I think you
11 need to know where they are now. And I didn't want to put
12 words in George's mouth.

13 MR. QUALLEY: Well, the comments are actually
14 similar to the ones that Rod Mayer made on the previous
15 application. I appreciate the discussion Eric had on
16 the -- kind of trying to strike the balance between moving
17 forward quickly and being able to develop a comprehensive
18 plan. That's basically the basic tenant of the early
19 implementation project to move critical projects forward
20 that are essential for protecting people who are at risk
21 right now, and certainly, this project that SAFCA is
22 proposing in Natomas, started to fit that criteria.

23 We've been working with this applicant as we have
24 with the other EIP applicants on a regular basis. You
25 know, there is additional technical review, technical work

1 to be done. We recognize that. But we feel it would be
2 entirely appropriate for you to take the actions that are
3 being recommended today to issue that letter to the Corps
4 for the 408 review and to issue a conditional permit to
5 keep the process moving forward.

6 This is an essential project, and the Department
7 of Water Resources supports moving forward with it.

8 MEMBER RIE: Question.

9 PRESIDENT CARTER: Go ahead.

10 MEMBER RIE: Is this project, as was the previous
11 two projects, is it in the budget for this year?

12 MR. QUALLEY: What's in the budget for this year
13 is the first element of the multistep Natomas Levee
14 Improvement Program. It's for the work that's proposed
15 for calendar year 2008 on the Natomas cross-canal levees.
16 There are other elements to Natomas Levee Improvement Plan
17 and we -- this first run through we had on the early
18 implementation was for fiscal year 07/08. But we do
19 anticipate having, as Rod Mayer mentioned earlier, another
20 cycle of early implementation for 08/09, and he
21 anticipated that SAFCA will be applying for additional
22 funding for 08/09 and beyond.

23 MEMBER RIE: And I want to ask the same question I
24 asked maybe an hour ago or two hours ago. Is there any
25 risk of having this money for the cross-canal project, the

1 stage 1 or phase 1 of the project that's scheduled for
2 summer '08? Is there any risk that if we don't issue a
3 permit today, next month, that that money will be
4 redirected somewhere else?

5 MR. QUALLEY: Well, I will answer that in two
6 parts. As Rod mentioned, the money doesn't go away
7 because it's bond funds and if it's not used for one
8 purpose, it would be there. The risk would be that if the
9 Prop 1E funds are appropriated on an annual basis, and we
10 have the appropriation right now for fiscal year 07/08 for
11 these projects.

12 So if we didn't get the funds committed for the
13 projects, for 07/08, those funds would be reverted and
14 then we would have to be going through the budget process
15 to have them reappropriate it for a project.

16 So that's the risk. And we have to go through
17 this process with Department of Finance, with the state
18 budget process, and we have gone through that process
19 with -- for the 07/08 funds, and we will be going through
20 that process for 08/09. So to ensure staying on schedule
21 for the work that's being proposed for the upcoming year,
22 it is important to keep these approvals going and keep the
23 projects moving.

24 SECRETARY DOHERTY: George, but if they know you
25 are in the process of doing this, if you didn't get it

1 today, they aren't going to run and assign it to somebody
2 else tomorrow?

3 MR. QUALLEY: No.

4 SECRETARY DOHERTY: Right.

5 PRESIDENT CARTER: Thank you.

6 Mr. Butler, please proceed.

7 SENIOR ENGINEER BUTLER: Okay. So with respect to
8 the 408 letter, I'm going to recommend to you today to
9 approve sending that letter to the Corps requesting 408
10 approval. And as part of this request, I recommend that
11 you find that the proposed alterations, specifically the
12 Natomas cross-canal phase 2 levee improvements, are in the
13 best interest of the state and will not have any
14 detrimental effect on the Sacramento River Flood Control
15 Project.

16 Number 2, if a permit is granted, the project has
17 been completed, and the alteration has been formally
18 incorporated within the federal project by the Corps, the
19 State of California, acting through the Board, will accept
20 the altered project for operation and maintenance and hold
21 and save the United States free from damage due to the
22 construction works. That's pretty standard 408 language
23 there.

24 And also then within 90 days of completion of the
25 project alteration, the Board must provide information to

1 the Corps for the purposes of preparing a revised
2 operations and maintenance manual for this portion of the
3 Sacramento River Flood Control Project along with as-built
4 plans and specifications for the alteration.

5 And finally, the one point that I recommend you
6 do, that you stated earlier, is that I recommend that the
7 Board direct SAFCA to perform additional hydraulic
8 modeling, if not completed already, and to share those
9 results with all interested parties.

10 This analysis should quantify the computed
11 differences or increases in water surface elevation above
12 the 1957 design profile along the levees of the Natomas
13 cross-canal, both sides, and the Sacramento River,
14 opposite the Natomas Basin and also along both sides of
15 the Sacramento River, below the mouth of the American
16 River, downstream to at least Freeport. So that's my
17 recommendation for 408.

18 President Carter, do you wish for me to make the
19 recommendation at this time on the permit, or do you want
20 to deal with them individually?

21 PRESIDENT CARTER: Individually, please.

22 So any questions for Mr. Butler?

23 Okay. We have a number of folks that would like
24 to address the Board here from the public. I will just go
25 in the order that I received these cards.

1 Mr. Buer, do you have anything to add?

2 MR. BUER: Thank you, President Carter and Members
3 of the Board. I'm Stein Buer, executive director for the
4 Sacramento Area Flood Control Agency. I appreciate your
5 patience and attention today.

6 This particular project, of course, is very urgent
7 because of the large number of people and infrastructure
8 which it protects. And of course it would have been our
9 desire today to have both the 408 letter and an
10 encroachment permit after that. But we understand that
11 there's a huge amount of information to digest, and we
12 appreciate very much staff's effort to get as much of it
13 done as can support the 408 letter today.

14 This project is built on over 20 years of analysis
15 following the '86 flood. We've already invested over a
16 hundred million dollars in levee improvements for the
17 Natomas Basin, including a 3 foot raise on the east side
18 of the basin. As has been documented by previous
19 presentations, there's a long history of authorizations,
20 both federal and state, leading to where we are today.

21 I want to emphasize that the project that you are
22 approving today is part of SAFCA's comprehensive 200-year
23 flood improvements. And while Joe alluded to the point
24 that Folsom Dam, when it is completed, will drop the water
25 surface elevations, I want to reemphasize that point. We

1 have a comprehensive plan. All of the elements are now
2 authorized. The Folsom improvements -- construction has
3 begun on the Bureau portion of it. The Corps is designing
4 the Corps' portion of it. It's all authorized. It will
5 go forward. It is the bureau's top national priority.

6 When that is completed along with these
7 improvements, we will see a reduction in stages in the
8 system. There will be system benefits that propagate, as
9 Joe showed, upstream, most of the way to Verona, and
10 downstream along the American River. And we'll be very
11 pleased to do the additional hydraulic presentations that
12 have been requested. They will demonstrate that we will
13 benefit the system as a whole.

14 I'd like to touch on --

15 PRESIDENT CARTER: One more minute, please.

16 MR. BRUNNER: Okay. Thank you.

17 Then I want to switch to talking about the
18 regional concerns. I think I will probably have caused
19 concerns up and down the valley in the context of the AB
20 930 discussions. I had probably inflamed concerns about
21 the urban areas getting better at the expense of rural
22 areas.

23 I want to apologize to the Board and all they
24 represent for inadvertently doing so. And I want to
25 emphasize that SAFCA's intent that we all get better

1 together. I think it's reasonable that the urban standard
2 be higher than the rural, but we all need to get better
3 concurrently. We are working with our regional partners
4 to make sure that happens, and I will be happy to answer
5 your questions about how we might accomplish that.

6 In summary, I think this is a no-regrets project
7 to address very significant geotechnical concerns. The
8 freeboard is part of the requirements that are put upon us
9 by DWR and the Corps. But the geotechnical improvements
10 are the core of the project.

11 I thank you for your attention, and I would be
12 happy to answer questions today.

13 SECRETARY DOHERTY: I have a few questions for you
14 or a few statements to make. You mentioned that we are
15 now working as partners, and I don't feel that in the
16 beginning this is what SAFCA did. You sponsored in past
17 legislation directing -- dictating the minimum state cost
18 share but only for your projects, the best funded state
19 agency, and even when approached by the rural districts,
20 you didn't consider including others. Reducing costs for
21 the ones with money is absurd, self-serving, and will
22 result in consuming state funding ability on one of the
23 few agencies that can actually afford a private, more
24 substantial cost share.

25 That was one of the things that bothered me.

1 And I think that some of your plans are predicated
2 on -- even though Joe Countryman said no levees breaking
3 upstream, I think some of those things were predicated on
4 happening on this.

5 And we should be looking at this as a system.
6 This project will have transferred risks, and these risks
7 need to be mitigated by improving adjacent flood projects
8 concurrently, not some day -- at a minimum, obligating
9 funds for these efforts concurrently. Not a single rural
10 district believes if you fix Sacramento ahead of the
11 rurals, our repairs will be forthcoming.

12 I think there's a real transfer of risk here to
13 the other side of the river.

14 (Applause.)

15 SECRETARY DOHERTY: And whether it took place now
16 or years ago, when you raised this side, I still think
17 this transfer is there.

18 Thank you.

19 MR. BUER: Was that a question?

20 SECRETARY DOHERTY: Well, I just wanted you to
21 know that these are my feelings. And are you addressing
22 these and are you considering this system as a whole or
23 just the Natomas region?

24 MR. BUER: I would like the opportunity to make a
25 couple of comments. Again, if I have inflamed those

1 concerns, I apologize. But I would like to cite a couple
2 of specific thoughts that might be helpful.

3 Number one, we have been very supportive of the
4 system improvements that DWR and the Corps have
5 implemented since 2006 amounting to about \$340 million
6 worth of erosion protection. If we buy in the theory that
7 any improvements that any district makes transfer risks
8 elsewhere, we who occupy the lower end of the system
9 should have been concerned and objected. We have not.
10 We've been supportive of the south bend project and its
11 implementation. We've been supportive of the governor's
12 emergency declaration and the fact that these improvements
13 have been done systemwide.

14 Secondly, and with more immediate
15 neighbor-to-neighbor situation with respect to RD 1001, we
16 worked to get the authorization to raise the north levee
17 of the Natomas cross-canal authorized. It is now
18 authorized as of WRDA '99.

19 Secondly, as part of our implementation of this
20 project, we have committed to obtaining raw materials from
21 a pit in RD 1001 in order to provide that reclamation
22 district with over a million dollars in seed money to
23 initiate the improvements on their side. We have
24 developed agreements with Sutter County to address any
25 concerns with respect to roads and so on. And we are

1 committed to following through on those actions.

2 While we did not have the power to make the
3 improvements, we certainly will support any reclamation
4 district that wishes to make improvements if they choose
5 to take that pathway. That's the message I would like to
6 leave you with.

7 SECRETARY DOHERTY: Thank you.

8 PRESIDENT CARTER: Thank you.

9 Ms. Hovis?

10 What I would ask is that people attempt to be
11 brief. I'm going to limit you to three minutes. And
12 please don't repeat something that somebody else has
13 already said.

14 MS. HOVIS: President Carter, Board, my name is
15 Linda Hovis. My property is next to the south levee of
16 the Natomas cross-canal.

17 I am in opposition to the elaborate plan that
18 SAFCA has come up with to protect a small area here in
19 northern California from floods. I believe that the only
20 ones who will benefit from this elaborate project are the
21 engineers who designed it and their companies who will get
22 the government contract to do the work.

23 Raising the levees will also raise the water
24 levels. To get controls of our waterways, you need to
25 first get control of the water level. The Natomas

1 cross-canal is overgrown with trees, brush, reeds, and
2 such. It has not been cleaned out in decades.

3 I have 19 pages from the Webster Dictionary on the
4 meaning of the word "canal," and nowhere does it say that
5 it is for the growing of trees, brush, and such.

6 It states, in fact, if I can read it with these
7 glasses, "An artificial water course of uniform dimensions
8 designed for navigation, drainage, or irrigation."

9 We have dedicated acres for wetlands and forest.
10 We need to dedicate our waterways for the free flow of
11 water. I also worry about the slurry walls that are in
12 the plans to be built in the levees and what they will do
13 to our underground water system. I depend on that
14 underground water, as do my neighbors, for our water and
15 our homes and to irrigate the agricultural fields.

16 The Sacramento River has not been dredged in
17 decades. You don't think that the yacht that sunk in the
18 river in downtown Sacramento doesn't affect the flow? We
19 all want clean air, clean water, and to be protected from
20 the risk of floods. But this plan from SAFCA will not do
21 that. There has been talk of other ways to protect the
22 homeowners in north Sacramento area. And we need to look
23 further into those ideas.

24 Please, let's not let the City of Sacramento
25 dictate to the rest of northern California regarding our

1 rivers, waterways, and levee protection.

2 And I would also like to ask the Board, before you
3 vote on this, come out, take a look at what you are voting
4 on and see what's going on. And also I would like to
5 request, there's been -- SAFCA has been out to the Garden
6 Highway. And now the Corps of Engineers is going out to
7 the Garden Highway with meetings. Nobody is coming to
8 Pleasant Grove.

9 And I request a public meeting for us, the little
10 handful, and have the other people surrounding a public
11 meeting in Pleasant Grove.

12 Thank you.

13 PRESIDENT CARTER: Thank you.

14 Mr. Shelley?

15 MS. HOVIS: He couldn't make it back.

16 PRESIDENT CARTER: Okay.

17 Mr. Marshall?

18 MR. MARSHALL: Thank you, President Carter,
19 Members of the Board. Richard Marshall. I'm the
20 executive executor of the California Central Valley Flood
21 Control Association. And we represent 73 different
22 maintaining agencies and they are everything from very
23 rural districts to large urban areas.

24 You should have a copy of my comments in front of
25 you. I just want to hit -- yes. I want to hit the main

1 point so that, you know, the system -- it is a system, a
2 flood control system. And we would like it to continue to
3 be reviewed as a system. We don't believe that the
4 project should individually or cumulatively redirect
5 hydraulic impacts from one area to another. Instead, it
6 should improve, or at least not reduce, the flood
7 protection for the entire system.

8 Joe already talked about failures within the
9 system. This Natomas Levee Improvement Program is an
10 important part of the need of systemwide improvements that
11 we've been fighting for, for 80 years, by no means, the
12 only part of the necessary systemwide improvements.

13 And the Natomas Levee Improvement Project is a
14 project that needs to be pursued, as you said, Lady Bug,
15 without impacting and disadvantaging rural areas. And to
16 this end, though, I would say that at our last association
17 meeting, we heard of the different conflicts within our
18 own members about this project, including SAFCA. And I
19 would say that they were very open to having a meeting.
20 And as recently as yesterday had a meeting with
21 representatives from the surrounding RDs and are working
22 with them to pursue an MOU and to collaborate on effective
23 resolution of the differences and make sure everybody
24 understands the impacts of this project.

25 So the association strongly supports the agencies

1 coming together to achieve mutually beneficial results.

2 And those are my comments.

3 PRESIDENT CARTER: Thank you.

4 Mr. Wallace?

5 MR. WALLACE: Thank you, Mr. Chairman. I'm back.

6 When I came here this morning, I had not had a chance to
7 read the Sacramento Bee. And then I picked it up there it
8 is -- the first shoe that dropped, and that is the
9 lawsuit, the first lawsuit, that was filed.

10 I noticed that it says in there that this project
11 would raise and widen nearly 25 miles of levee buffering
12 the Natomas Basin, and then it says, "Mayor Heather Fargo
13 was quoted as saying that 'the project is going to benefit
14 the Garden Highway residents.'"

15 Well, they may have something to say about that.
16 But the point being, once again, the 800-pound gorilla in
17 the room that is not mentioned, unless somebody gives
18 their address, like me, Pleasant Grove. What's going to
19 be done for Pleasant Grove? What are you going to do
20 about the fact, you don't want have to wait for this
21 project to have a further adverse effect on Pleasant
22 Grove, because it already is. We've already been flooded
23 there, twice, because of the impact of what was done by
24 the reclamation district, which was in violation of a
25 direct court order and was reaffirmed by the California

1 Third District Court of Appeal, which cost the taxpayers
2 of this state millions of dollars.

3 Now, are we going to have to go through that
4 again? Is nothing going to be done about the fact that
5 the reclamation district and other governmental agencies
6 already are in violation of a court order that forbid the
7 raising of the west side of the Natomas Creek
8 cross-canal -- Pleasant Grove cross-canal called Natomas
9 Road. It was against a court order for that to be raised.

10 As Mr. Borgman said earlier, in increments, little
11 bitty increments, every time they came out to fill the
12 potholes, they'd raise it an inch or two or three or
13 whatever. Now it's 6 feet higher on one side of the canal
14 than it is on the other.

15 That has to be addressed. And it's never, ever
16 mentioned. I've appeared before boards like this before.
17 I rant and rave about it. Everybody looks like they are
18 paying attention, nodding their heads, and nothing ever
19 happens. It's never mentioned again. What are you going
20 to do about it? Don't worry about what else is going to
21 happen. What are you going to do about what's already
22 there?

23 I about fell out of my chair when Joe, who's last
24 name I can't remember -- silver-haired gentlemen here,
25 like me -- mentioned that there has never been any

1 overtopping. Oh, my God. I wish you had been in my
2 living room on January 1st, 1997, when I'm watching the
3 Rose Bowl with one eye and watching the levee on my left
4 as it overtopped.

5 And during the day, it chewed itself away and by
6 late that afternoon, my wife and I are scrambling to get
7 everything we owned up to the second floor. If that
8 wasn't overtopping, I have a real misunderstanding of the
9 definition of the word.

10 MR. COUNTRYMAN: It's not a project levee.

11 MR. WALLACE: Whatever it is, it overtopped.

12 PRESIDENT CARTER: Please wrap up.

13 MR. WALLACE: The point being, Mr. Chairman and
14 Board, is that something has to be done to protect
15 Pleasant Grove. I took it upon myself, as two or three of
16 my neighbors did, to build a wall around my house. Goes
17 from 4 feet high to 10 feet high. Others have even higher
18 walls because we are completely defenseless.

19 And what has happened since the flood of '97? The
20 Pleasant Grove Elementary School had to build a wall
21 around the elementary school. Can you imagine what would
22 happen if there's a sudden failure of that levee and
23 there's 300 kids in that school?

24 Thank you, sir.

25 PRESIDENT CARTER: Mr. Borgman?

1 MR. BORGMAN: My name is Melvin Borgman, and I
2 live in the vicinity of Howsley Road and Pleasant Grove
3 road.

4 And I think the benchmark -- I think there's a
5 benchmark at the intersection, which is at 45 feet
6 elevation. The EIR for the Natomas Creek Project analysis
7 of hydrology says that there is a slight increase for the
8 bank protection project and no increase to the levee
9 improvements.

10 With all due represent to all the professionals
11 here, that ignores history. We have experienced
12 constantly increasing water level elevations since the
13 beginning of the project, particularly since the 1955
14 flood event.

15 As the river elevation at Verona rises, it backs
16 up into the Natomas cross-canal system, which includes the
17 area where Mr. Wallace lives. The water was pushed
18 further upstream. The land did historically not flood.
19 And we are beyond the reach of the reclamation system,
20 because in the beginning the flood waters never got there.

21 We are east of the WB railroad track. And as the
22 water elevation increases on the west side, the east side
23 of the railroad becomes a river that includes Coon Creek,
24 Ottoman Creek, Pleasant Grove Creek, and all the other
25 small creeks in between, trying to find a way to get to

1 the river. The levee was raised in 1957 and the water got
2 higher.

3 As I mentioned earlier today, what would really
4 help everybody in the system is to lower the water
5 elevations in the system. We need to increase the river
6 profile particularly in width so that we can get the water
7 down. Other things that SAFCA could do which would help
8 the system would be to move levees back from the river
9 channel. That would reduce their chances of erosion and
10 levee failure. Also, they must curtail discharge of water
11 into the river system during high water stages. And I
12 would especially ask that they would stop pumping water
13 into the Natomas cross-canal from the plant on the
14 northern main drain, especially when the water elevation
15 is up to where it starts getting up into the Pleasant
16 Grove area.

17 SAFCA should in this whole plan provide ample
18 internal storm water retention, perhaps for five days,
19 even, as some of our storms do last a long time. Our rice
20 fields used to provide this. Well, now the rice fields
21 are being turned into habitat and houses.

22 PRESIDENT CARTER: Mr. Borgman, please wrap up.

23 MR. BORGMAN: Yeah. The opening of the
24 cross-canal into the Sacramento River is constricted
25 probably to less than 50 percent. There's a big pile of

1 dirt between the Garden Highway bridge and the Sacramento
2 River. There is a boat dock which fills most of the
3 remaining channel, and there's a sunken boat in the
4 channel.

5 The canal width at the mouth there is
6 significantly narrower and when the levees come together,
7 it's less wide at the Verona confluence with the
8 Sacramento River. I realize that nobody wants to give up
9 land to the river, but I think SAFCA needs to consider
10 putting some of their land back into the river to give the
11 river some more room.

12 PRESIDENT CARTER: Thank you.

13 MR. BORGMAN: Thank you very much.

14 PRESIDENT CARTER: Mayor Fargo.

15 MAYOR FARGO: Good afternoon. And let me start by
16 saying thank you for your stamina. We appreciate you
17 still being here with us. This project matters very much
18 to us. So we're glad that you are paying attention.

19 We appreciate that very much. President Carter,
20 Board Members and staff, my name is Heather Fargo. I am
21 mayor here in the City of Sacramento. Although I have
22 been on a diet. Apparently, I weighed 800 pounds and am
23 very hairy.

24 I am also the chair of SAFCA, a board that I have
25 sat on for 17 years now. And some would wonder why I

1 still am on SAFCA as a board member. And I do it because
2 I think that flood protection is the most important issue,
3 from a public safety point of view, facing the city of
4 Sacramento. It's something we have worked on for a very
5 long time and something frankly that I am -- I'm not sure
6 that I want to say this is the most discouraged I have
7 ever been, but I am very discouraged at where we are today
8 given everything that we have done here in the city and
9 community of Sacramento.

10 You know, we're in a process of once again being
11 looked at for remapping and we have already done a lot in
12 terms of Garden Highway construction. Of course we're
13 being asked to do more. Took a long time to get the
14 community beyond denial in the first place to accept the
15 fact that just as San Francisco has earthquakes, we have
16 flooding. And we need to take that seriously and do all
17 we can to protect ourselves and protect our residents to
18 be sure that we have our flood evacuation plans in place
19 and to help pay for it.

20 We have worked on projects on the Sacramento
21 River, on the American river, on the east main drain, on
22 the south streams group, and probably others that I am
23 forgetting.

24 We've already done the Garden Highway before in
25 terms of slurry walls. We have already had to close that

1 road before in different locations and put up with the
2 inconvenience and the irritation of construction and
3 trucks and businesses being affected and all that.

4 And we have assessed ourselves. Most recently, we
5 passed the last assessment here in Sacramento with an
6 82 percent yes vote. It's not easy to get people in
7 California to vote for assessing themselves. But it's
8 something that we've been forced to do, given how local
9 government is financed in California, and it's something
10 that we feel is very important.

11 So we also of course voted for Prop 1E. Those of
12 us who live in Natomas, and I am one of those 70,000
13 people; I've lived there since 1979. And I paid for flood
14 insurance when it was the preferred risk as it is now, and
15 I've paid for flood insurance when it's at high premiums,
16 which it is about to be again.

17 We have looked at three options for this Garden
18 Highway project. And I think what we have before you
19 today is the best we can come up with. We had a lot of
20 incredible engineers working on it at the federal level,
21 state level, the local level, and private consultants.

22 And there's basically three options: We can do
23 nothing, and leave the 70,000 people at a higher level of
24 risk, paying higher levels of flood insurance for a very
25 long time, if not forever; we can raise the Garden Highway

1 and do a slurry wall on it. The problem with doing that
2 slurry wall -- one minute? Got it. Doing that slurry
3 wall is that the new requirements from the Corps require
4 the state to first sturdy the levee off first, which
5 obviously would impact every Garden Highway resident. It
6 would move all of their encroachments, their driveways,
7 their mailboxes, and everything else, putting in the
8 slurry wall, then putting a levee back.

9 The third option is the option before you. And if
10 there's a fourth, we'll consider it, but we don't want to
11 be slowed down.

12 We think this option is best for the Garden
13 Highway residents and it gives us the protection we need
14 in the Natomas area.

15 And while I agree that we need a statewide plan
16 for flood protection, we don't think and I don't think
17 that Sacramento should be penalized because we're ready to
18 go forward. We have done our planning, our engineering,
19 our EIRs, our public outreach, our assessments. We have a
20 match and we're in the state budget. And we have the
21 governor's support as well.

22 The real risk today isn't the risk of losing the
23 money and losing the funding. It's the risk of losing a
24 construction season and leaving people at risk who are in
25 the basin. So every construction season we lose is one

1 more year of a winter that we're at risk.

2 And I also need to put on the record that Roger
3 Dickinson, the county supervisor for the area, wanted to
4 be here tonight. He was called out of town and couldn't
5 be here.

6 I would be happy to answer any questions you might
7 have.

8 PRESIDENT CARTER: Thank you.

9 MAYOR FARGO: Thank you very much.

10 PRESIDENT CARTER: Mr. Avdis?

11 MR. AVDIS: Good afternoon. My name is Nick
12 Avdis, and I'm a resident of Natomas. I live near East
13 Levee Road near the Natomas east main drain, south of Elk
14 Horn Boulevard. I've been a long-time resident and a
15 long-time landowner. My family has ranched in the basin
16 for over 70 years.

17 And first of all, let me just say, thank you for
18 the opportunity to comment here today and I will keep my
19 comments very brief.

20 This is an issue that's critically important to
21 our area and the entire region. I stand before you
22 advocating support of SAFCA's request today. It's
23 absolutely critical that those of us living in the basin
24 see that the shoring up of our flood protection
25 infrastructure proceeds forward without further

1 unnecessary delay.

2 What I want to say is nothing new, but believe it
3 bears repeating. First of all, tens of thousands of
4 people call the Natomas Basin home, and while the impact
5 of the relatively few that will be impacted by the
6 improvements of the levees will be significant and can not
7 in any way be understated. The potential catastrophic
8 consequences of levee failure in our region is
9 immeasurable.

10 Second of all -- and this is sort of the reality
11 on the ground of Natomas. At a time when your community
12 is being hit hard with foreclosures and families struggle
13 to make their mortgage payments, the specter of drastic
14 increases in flood insurance has the potential to further
15 increase the downsize from the foreclosure fallout in our
16 community. This potential poses a significant threat to
17 the vibrancy and well-being of community as well as
18 threatening people's perception of Natomas as a safe and
19 desirable place to raise a family. And these impacts
20 cannot be understated.

21 On a personal note, in 1986, my family endured
22 10 feet of water in our home. The effects to my family's
23 livelihood were severe and took many years to recover.
24 Still, we survived. My family continues to ranch and to
25 call Natomas home.

1 Today for tens of thousands of families that now
2 live in the basin, a catastrophic flood would have
3 enormous psychological, social, and economic impacts that
4 will reverberate not just in our community but the
5 Sacramento region as a whole.

6 The bottom line is, we can discuss this issue to
7 no end. But there needs to be action. The safety of our
8 community demands it. At some point, the will of the
9 community as a whole should guide decision makers, such as
10 yourselves. And in fact, our community has spoken. We
11 voted overwhelmingly for the special assessments to
12 provide our share of the necessary improvements. This was
13 a resounding yes to the improvements to move forward as
14 soon as possible.

15 Furthermore, we also voted for State 1E bond
16 money. Indeed, SAFCA's board certification of the EIR
17 served as a validation of the proposed improvements. And
18 now it's the responsibility of this Rec Board to meet its
19 stated mission to maintain the integrity of the existing
20 flood control system and to take the next logical and
21 reasonable step, whose duty is to further public safety to
22 assure that it will not delay the necessary improvements
23 to our levee infrastructure.

24 The consequences of moving forward, to our
25 immediate community, are in our region unfathomable. A

1 failure to act decisively for the safety of the greater
2 community at such a critical juncture will be at best
3 irresponsible and shortsighted.

4 In conclusion, it is wholly unreasonable to think
5 that improvements that need to be made for flood
6 protection infrastructure in our region will not adversely
7 affect some people at some level.

8 The improvements proposed by SAFCA have been
9 properly examined and vetted. The fact of the matter is,
10 is our levees are substandard and need to be improved and
11 need to be improved immediately, without further and
12 unnecessary delay.

13 Does the possibility -- does the 1 percent
14 possibility on a catastrophic flood event justify action?
15 2 percent? 3 percent? I will let your conscience be your
16 guide. The health and stability of our region as well as
17 the countless of thousands depend on it.

18 Thank you.

19 PRESIDENT CARTER: Thank you.

20 Mr. Roth? Not here any longer? Daniel Roth?

21 Mr. Shiels?

22 MR. SHIELS: President Carter and Members of the
23 Board. I'm John Shiels, president of the River Oaks
24 Community Association, an area between I-80, I-5, and
25 Garden Highway. I'm also a member and vice president of

1 the board of trustees for RD 1000 and a member of the
2 state board.

3 I would like to remind you, because this is fresh
4 in our mind for many of our residents, two years ago, we
5 had a flood fight at Prichard Lake. And we had a severe
6 problem with underseepage. We had the fight successfully,
7 unfortunately.

8 The people in that basin for the last few years
9 who have moved in, tens of thousands of them, moved in
10 with the premise that they were not in a floodplain. They
11 were assured that they were safe. And then we learned,
12 when the Corps came along, and looked at it and said, "you
13 have an underseepage problem," that we're no longer safe.

14 So you have a high level of stress. You have
15 people who feel that they are in a situation that they
16 didn't bargain for. And as the previous speaker so
17 eloquently stated, they provided the fund and the support
18 to correct the problem.

19 Every year that we delay getting the job done is
20 adding to the probability that that basin will flood. And
21 70,000 people will be homeless, lives may be lost, the
22 economy of the area will be just devastated because you
23 will wipe out I-5, I-80, the two major east-west,
24 north-south highways in the area. The rail line will not
25 function, and the airport will no longer function. That

1 will devastate the Sacramento area as well as devastate --
2 have a very negative affect on the entire state economy.

3 Members of the Board, I submit to you that we must
4 move ahead with alacrity. Don't fall into paralysis by
5 analysis, but move on this. Approve these permits and the
6 408 process, and get us going. We need to provide safety
7 to the Sacramento area. Sacramento is the second most
8 at-risk city in the United States. Natomas is the most
9 at-risk area in Sacramento.

10 Thank you.

11 PRESIDENT CARTER: Thank you.

12 Mr. Yeates?

13 MR. YEATES: President Carter and Members of the
14 Reclamation Board, I sent you a letter with a whole lot of
15 attachments and I am just passing out the one slide. And
16 I'm not techy enough to go back to what Joe Countryman put
17 up there, but it's the one of the cross section of the
18 river.

19 And the issue really comes down to what your staff
20 talked about and what my clients are most concerned about
21 is the impact of the Natomas Basin Improvement Program on
22 the homes that are on the other side of that levee and
23 also how it will affect whatever Yolo County may do on the
24 west side of the Sacramento River.

25 And if you just simply look at that diagram, and

1 Joe put it up there again and explained it for exactly
2 what it is, is if you just deal with what the California
3 Environmental Quality Act requires us all to consider is
4 how this project will affect the existing environment. If
5 you live in the orange, which I call red, but maybe it's
6 orange, on this side, you can see that in order to design
7 the east levee to provide the 3 foot freeboard, and what
8 is described on the blue line as the 200-year Natomas
9 Levee Improvement Program design water surface, that on
10 the west side they are 3 to 4 feet below that level. That
11 means that it's going to overtop and flow into the west
12 side, or Yolo will improve their levee in response to
13 this.

14 You know, and there's some question in the EIR as
15 to whether they'll do that or not. Maybe they will in
16 their self-interest.

17 And then what happens to your properties on this
18 side? Your staff had really kind of laid it out as well
19 as I've heard anyone say it, is that there is this
20 perception, regardless of what hydraulics say or whatnot,
21 when you're holding more water inside this levee system,
22 for those people -- those homes right there and feeling
23 most vulnerable, they are very concerned about what
24 SAFCA's projects are going to do the them.

25 And I think what your staff is proposing is

1 exactly the kind of information that unfortunately was not
2 in the Environmental Impact Report. This information came
3 out in the November 29th SAFCA hearing, not in the EIR.
4 And again, played for you here.

5 It is something that is extremely important. We
6 need to find out exactly what this project will do to the
7 existing environment and how SAFCA may have a
8 responsibility and a duty under the law to reduce or avoid
9 those significant effects if, in fact, they are going to
10 affect property, structures, and maybe even human lives as
11 a result of what they have done.

12 That's all I have to say.

13 Thank you very much.

14 PRESIDENT CARTER: Thank you. Mr. Schneider?

15 MR. SCHNEIDER: Thank you. I will speak quickly.
16 My name is Jeff Schneider. I've lived in Natomas for
17 about thirty years, half of that in the basin, half of
18 that on Garden Highway where I live now on the wrong side
19 of the levee, apparently.

20 First thing I want to say is, nobody on Garden
21 Highway, and I know this as a fact, wants to hurt the
22 safety or effect negatively the safety of those people in
23 the basin. And I think that I can tell you that
24 personally, very strongly, the fact that I've been a
25 paramedic and a firefighter, fire commissioner, an EMS

1 chief, and chief of the State of California's Water Rescue
2 Team out of the Office of Emergency Services and put my
3 life on the line thousands of times to save people's
4 lives. So I'm not in it to hurt anybody, and no one else
5 is either.

6 The problem is, we believe that SAFCA has really
7 not looked at the negative impacts it's having on us.
8 What I really want to talk about is the model. And I'm
9 not an engineer, but I retired as the director of a
10 transportation agency where we used transportation models
11 that are almost the same thing. Maybe even a little more
12 complex, because cars go more than one direction.

13 But a model is a computer program with a set of
14 if-then statements. And those are put together by
15 experts. And as such, the output of a model is not
16 factual just as it comes out of a computer. It's a
17 proposal opinion at best.

18 And the problem that I have with what was
19 presented to you is that that model has been manipulated
20 here. You can manipulate a model by changing the input.
21 And the input, as Mr. Countryman has said, at two times
22 has been not factual. One of them is their input was that
23 the levees on the Yolo County side are higher than they
24 actually are. And the other is the assumption that no
25 levees will break upstream, which he also said was not

1 factual as well and, in effect -- which tells you that the
2 results, whether they are an opinion or not, have been
3 affected by this non-factual input.

4 And what it tells you is that more water is going
5 to come down than really is. So that, in fact, Mr.
6 Countryman stated -- I'm paraphrasing; you'd have to look
7 at the record. But that's what was required in order for
8 the model to output -- you need to do this project. And
9 that was I think the October 29th meeting.

10 But to sum up, the reality is that you have got
11 input to the model that is not factual. So it draws
12 into -- questions its output.

13 The interesting thing I noted also is that
14 Mr. Countryman said we did that because we didn't want
15 anybody to rely on a levee failure for their safety. And
16 it was interesting, though, when he talked about why my
17 house wasn't going to be impacted is because, well, we
18 know a levee will fail upstream. So we don't want to rely
19 on a failure to provide safety to anybody except for my
20 house and my neighbors.

21 Thank you very much.

22 PRESIDENT CARTER: Thank you.

23 Mr. Tully?

24 MR. TULLY: President Carter, Board Members. I
25 had the privilege to speak in front of you last time. I

1 think it was about a month ago. I appreciate the chance
2 again.

3 My name is Patrick Tully. I live on Garden
4 Highway. I own multiple businesses here in Sacramento and
5 also own houses in Natomas. So flood control is not
6 something that I'm against. But we do believe that this
7 project, as it's currently planned, will impact the
8 200-some Garden Highway residents, both of course on the
9 land side and the river side.

10 Some of the plans there would have us believe that
11 we would need to raise a levee for the freeboard to allow
12 construction continuing in Natomas. If the river level's
13 not going to change, then one would ask the obvious
14 assumption, then why would we need to raise the levee? If
15 it's going to stay the same, there should be no need
16 there.

17 I think it's also worth pointing out that when
18 SAFCA voted on this themselves that the Sutter County
19 representative on the SAFCA Board voted against this, the
20 Yolo County had valid concerns in the EIR also.

21 This is a positive thing for Natomas, but your
22 constituents are the state, not just Natomas. And I ask
23 you to keep that in mind in that we are going to be
24 negatively impacted. And, in fact, Mr. Countryman stood
25 here today, and we can go back to the reporter here, court

1 reporter here, and see that he did say that there is a
2 possibility for that having an effect on Garden Highway,
3 that there is a risk. There's minimal risk, but there is
4 a risk.

5 Now, the other thing too is everybody's mentioned
6 the height of the Yolo County levees. It's worth pointing
7 out, our houses are not over that height. Our houses are
8 within the range that we were told to build in. People
9 moved into Natomas because they were told that it was
10 safe. We moved to where we are because we were also told
11 it was safe.

12 There's two sides to that to be considered. The
13 last thing that I think is very important, as I wrap it
14 up, is that there's a hole in my front yard that I pull
15 clean water out of to drink. That's my well. My well
16 sits at a hundred and something feet deep. That well will
17 be about 50 feet from a hundred foot slurry wall that's
18 going to be cut through the middle of that levee. And you
19 would be surprised to see that in the EIR, there is very
20 little mention of that. And it only got added after we
21 brought it up -- actually, after I brought it up. That
22 slurry wall can be so close to the drinking water supplies
23 of so many people and effectively be a shield through that
24 levee and possibly it is contaminating or cutting off a
25 water supply. And the EIR has no studies, has no

1 mitigation. There's been no money allocated to even help
2 raise houses.

3 Thank you for your time.

4 PRESIDENT CARTER: Thank you. That's the last
5 card I have.

6 Is there anybody in the audience, member of the
7 public, that wishes to address the Board that did not
8 submit a card?

9 Very good.

10 So what we have before us right now is the staff
11 recommendation to approve sending a letter to the Corps of
12 Engineers as stated in the staff report.

13 What's the Board's pleasure?

14 MEMBER SUAREZ: I make a motion that we adopt the
15 staff recommendation and send the 408 letter.

16 PRESIDENT CARTER: Okay. Is there a second?

17 MEMBER BROWN: I will second it.

18 PRESIDENT CARTER: We have a second.

19 Any discussion?

20 MEMBER RIE: Does Mr. Morgan want to add some
21 clarifications?

22 LEGAL COUNSEL MORGAN: I may. If you give me a
23 moment, I would like to look at the draft. I haven't seen
24 it yet.

25 PRESIDENT CARTER: What we'll do is we'll take a

1 five-minute recess and we'll be back here. So stretch
2 your legs, please.

3 (Thereupon a break was taken in
4 proceedings.)

5 PRESIDENT CARTER: Mr. Morgan, you reviewed the
6 draft letter?

7 LEGAL COUNSEL MORGAN: Yes, I did. And it's fine
8 as written.

9 PRESIDENT CARTER: It's fine as written as
10 submitted in the Board packet.

11 So we had a motion to send the letter, 408 letter,
12 to the -- a letter to the Army Corps of Engineers
13 requesting an approval of this project as written.

14 Is there a second?

15 MEMBER BROWN: I did.

16 PRESIDENT CARTER: He did second it. Okay.

17 Any further discussion?

18 All those in favor, indicate by saying "aye."

19 (Ayes.)

20 PRESIDENT CARTER: And opposed?

21 Motion carries.

22 MEMBER BURROUGHS: That was an aye.

23 PRESIDENT CARTER: Did you oppose?

24 MEMBER BURROUGHS: Aye. No. Not opposed.

25 PRESIDENT CARTER: Motion carries unanimously.

1 All right. On to Item 2. Mr. Butler, please be
2 concise.

3 SENIOR ENGINEER BUTLER: Yes, sir. I think that
4 will be easy given what we've already discussed.

5 The second part of my recommendation is that you
6 defer approval of the permit for this project today
7 until -- for a few things, until number one, that staff
8 has had sufficient time to complete the review of SAFCA's
9 environmental impact reports, an additional September 2007
10 hydraulic analysis, which may turn out to be an earlier
11 draft that I will work with Joe on. I would like to be
12 able to review the construction drawings and
13 specifications. We've also had no one to do a
14 geotechnical review of those drawings. I am not a
15 geotechnical engineer. I don't feel like I'm competent at
16 all to take that upon myself. And just any other
17 supplemental background materials that I haven't
18 thoroughly had a chance to look at. I don't see any
19 showstoppers currently, but I think it would behoove us to
20 wait a little bit.

21 I also believe that you need to find that you are
22 in agreement with the EIR or adopt your own findings. And
23 I don't think you can do that today because we don't have
24 findings or our own notice of determination.

25 SECRETARY DOHERTY: So is your suggestion that we

1 put this motion off until our next meeting until we have
2 this information?

3 SENIOR ENGINEER BUTLER: Yes, ma'am.

4 SECRETARY DOHERTY: Well, then I would like to
5 make a motion that we put the decision for this subject
6 off until our next meeting.

7 MEMBER BURROUGHS: I will second that.

8 PRESIDENT CARTER: Okay. We have a motion and a
9 second.

10 Discussion?

11 MEMBER RIE: I'm just wondering, since we're on a
12 new agenda item, did we need to ask if there's any
13 speakers?

14 SENIOR ENGINEER BUTLER: It's actually part of the
15 same agenda item. I just broke it up into parts one and
16 two.

17 PRESIDENT CARTER: Is there any new information to
18 be presented by staff, the applicant, any new comments
19 from the public?

20 MEMBER BROWN: Or if it's going to cause any
21 hardship on the project?

22 SENIOR ENGINEER BUTLER: The only thing I can add
23 is that in discussions with SAFCA's representatives today,
24 they have told me that they are in agreement, that this is
25 okay. But I would like to call Mr. Buer up.

1 MR. BUER: Stein Buer again.

2 We would be happy to return in January. And thank
3 you so much for your patience today. We really appreciate
4 it.

5 PRESIDENT CARTER: Any other comments?

6 Discussion from the Board?

7 MEMBER SUAREZ: I just have a comment or a
8 question. And perhaps it's something we'll need to
9 discuss when we meet again.

10 So I'm still just trying to struggle with this
11 theme that I've heard a couple of times already, which is
12 we have to do the CEQA review, an independent CEQA review,
13 to paraphrase some of what was said. And we've -- it is
14 my understanding, we've been responsible agency. It is my
15 understanding that there is a process, an administrative
16 review process of the CEQA documents, both in the Three
17 Rivers project and the SAFCA project. And we seemed to
18 address the CEQA issue, but there's no history here
19 between Reclamation Board and the CEQA process.

20 I don't think that's helpful. I don't think
21 that's accurate. And I would like to make sure the next
22 time we talk about this, we talk about what comments the
23 Reclamation Board provided on these environmental
24 documents and what kind of responses we got back and why
25 those responses are not satisfactory.

1 Thank you.

2 PRESIDENT CARTER: Okay.

3 MEMBER RIE: I have a question.

4 PRESIDENT CARTER: Yes. Go ahead.

5 MEMBER RIE: Since we were not presented with any
6 CEQA findings, I would just like to know, for my own
7 information, what the CEQA findings would be for this
8 particular application. I don't know if you want to try
9 to address that or if the applicant wants to come up and
10 speak briefly regarding CEQA.

11 SENIOR ENGINEER BUTLER: My part would be, no, I
12 don't want to address it because that's up to now not been
13 my role. We have another person that does that as far as
14 SAFCA.

15 PRESIDENT CARTER: Would it be appropriate to
16 address that question when we do have this on the agenda
17 again in January?

18 MEMBER RIE: I would just like to briefly hear
19 what the CEQA findings would be.

20 MR. WASHBURN: Tim Washburn, agency counsel for
21 SAFCA.

22 Typically, as a responsible agency, you would rely
23 on the findings of the lead agency, which we did provide
24 to you unless there were particular concerns or interests
25 that you had that were not adequately addressed in our

1 process. So I believe you have a copy of our findings,
2 mitigation monitoring program, findings of overriding
3 consideration that we made in connection with this
4 project. Those would typically be relied on by all
5 responsible agencies acting in connection with this
6 project.

7 MEMBER RIE: Do we have a copy of the findings?

8 SENIOR ENGINEER BUTLER: Yes, Teri. The CEQA
9 documents are basically references 1, 2, and 3. You
10 received them via overnight earlier in the week, I
11 believe. There's final EIR and then there's SAFCA's
12 resolutions and another document related to that.

13 MEMBER RIE: I guess I was just looking for
14 something on the turtles and the frogs and the snakes.

15 SENIOR ENGINEER BUTLER: That's all in the final
16 EIR and the draft and the comments. They are not in as
17 part of this electronic file, but you do have hard copies
18 of it.

19 MEMBER RIE: Mr. Morgan, is it necessary as part
20 of our CEQA findings to go through and comment on which
21 animals need to be moved around?

22 LEGAL COUNSEL MORGAN: You're going to have
23 limited responsibilities under CEQA as a responsible
24 agency. And typically, what you are going to be doing
25 next month -- it's on the agenda next month. You'll be

1 making findings sort of guided by the staff report and the
2 staff recommendations which will walk you through the
3 impacts that are relevant to the Reclamation Board.

4 Today was kind of unusual. We had a resolution
5 that has been drafted by the applicant. And I just wanted
6 to make sure and put on the record we had very clearly
7 gone through and made sure the applicant had articulated
8 the grounds for all the findings that they were asking the
9 Board to make. That was an unusual situation. I don't
10 expect that to happen again. I hope it doesn't happen
11 again.

12 MEMBER RIE: We've spent so much time talking
13 about CEQA findings today. And I know on previous
14 applications, we've been as simple as, "We hereby made
15 CEQA findings."

16 And in other cases, we've had resolutions. We
17 haven't been that consistent. So I was just wondering,
18 what is the basic requirement for making a CEQA findings
19 as a responsible agency?

20 LEGAL COUNSEL MORGAN: Well, you do have to go
21 through and either make findings that there was -- that
22 the items in the environmental document as prepared by the
23 applicant have reduced things to below significant levels
24 if they are within the concern of the Board, or as in this
25 case today, there was overriding considerations for items

1 that were not reduced below significance.

2 MEMBER RIE: And then one more thing. Since we
3 are postponing any sort of decision today, I want to make
4 sure that we have the resources. We heard a lot of talk
5 about, "We only have one person to make findings and
6 review CEQA documents." Do we have the resources to make
7 findings, review documents, and prepare a staff report
8 with those findings in time for the January meeting?

9 SENIOR ENGINEER BUTLER: Well, with the exception
10 of the CEQA findings, I can respond to all of that. And
11 if I can get those, I can easily incorporate those into
12 the staff report and provide you a recommendation based on
13 the fact that we have them. So you can adopt SAFCA's or
14 document your own. But at this point, you don't have any
15 feedback from the other Board staff on the CEQA issues to
16 take that action today.

17 So yes, I believe -- assuming our CEQA person is
18 back in the office soon, the January time frame for
19 completing these last few reviews should be easily
20 achieved, and we can bring it back to you next month.

21 MEMBER RIE: So you have confidence we have the
22 resources with our one and only staff person to come back
23 and make those findings.

24 SENIOR ENGINEER BUTLER: I believe we can do that,
25 yes.

1 VICE PRESIDENT HODGKINS: I hate to belabor this,
2 but this is a quick discussion. Looks like Scott's gone.

3 You know, as I looked at the resolution -- and I
4 guess that that was a much more detailed resolution than
5 we normally need. But I guess the other part of this is,
6 somehow we have to make the Department of Water Resources
7 understand, or whoever makes the comments on the EIR, that
8 it's important as a responsible agency to think about
9 commenting as a responsible agency and not as just
10 generally the state of California. So we need to talk
11 more about how we're going to accomplish that.

12 SENIOR ENGINEER BUTLER: And just let me verify
13 that we -- DWR did make comments and asked me to bring
14 them. And I provided copies of those comments. Those
15 were made long ago, several months ago.

16 And as I have been become familiar with this
17 overall process, I'm learning that that's part of the
18 process. I didn't even know that was part of the process
19 until about a week ago. So my apologies for not being
20 CEQA expert. Hopefully, that will come down the road.

21 PRESIDENT CARTER: Any other comments, questions?

22 Okay. We have a motion and a second to defer this
23 item as per the recommendation of staff.

24 All those in favor, indicate by saying "aye."

25 (Ayes.)

1 PRESIDENT CARTER: And opposed?

2 MEMBER RIE: Aye.

3 PRESIDENT CARTER: Okay. Motion carries.

4 We have two more items on our agenda for this
5 evening.

6 They are Board Comments and Task Leader Reports,
7 Future Agenda, and then adjourn.

8 I've heard some desire to postpone the discussion
9 of the future agenda at this point.

10 What's the Board's pleasure?

11 MEMBER RIE: Adjourn. Adjourn.

12 PRESIDENT CARTER: Okay. Very good.

13 Then I want to wish everybody a very happy holiday
14 season. This is our last meeting as the State Reclamation
15 Board. This is a historic moment.

16 We leave as Reclamation Board members. We return
17 in January as Central Valley Flood Protection Board
18 members with two new additions.

19 So everybody have a safe holiday season. We are
20 adjourned.

21 (The Reclamation Board meeting adjourned at
22 5:23 p.m.)

23

24

25

1 CERTIFICATE OF REPORTER

2 I, KATHRYN S. SWANK, a Certified Shorthand Reporter
3 of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the
5 foregoing Reclamation Board Meeting, was reported in
6 shorthand by me, Kathryn S. Swank, a Certified Shorthand
7 Reporter of the State of California, and thereafter
8 transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said meeting nor in any
11 way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 4th day of January, 2008.

14

15

16

17

18

19

20

21

22 KATHRYN S. SWANK, CSR

23 Certified Shorthand Reporter

24 License No. 13061

25